London School of Economics and Political Science

The History of Local Rates in England

STUDIES IN ECONOMICS AND POLITICAL SCIENCE

EDITED BY W. A. S. HEWINS, M.A.

THE HISTORY OF LOCAL RATES IN ENGLAND

THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE

9 JOHN STREET, ADELPHI, LONDON, W.C.

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THE

HISTORY OF LOCAL RATES IN ENGLAND

FIVE LECTURES

BY

EDWIN CANNAN

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PREFACE

THE lectures which are here published in a somewhat amplified form were given for the London School of Economics and Political Science in November and December 1895.

The fact that the words "Five Lectures" appear on the title-page will, I hope, protect me from attack on the ground that I have not dealt with the whole subject. To do so in five lectures would be obviously impossible. It was necessary to select a part; and, as is explained in the text, I have selected the part which interests the urban occupier who thinks his landlord ought to pay the rates, the urban landlord who fails to agree with him, and the rural landlord and farmer who are united in believing it unfair that certain kinds of property not possessed by them should escape being rated.

The authorities employed are sufficiently indicated in the text and notes. I have to thank Mr. Hewins and Professor Cunningham for directing my attention to several which have been of much use.

OXFORD, *January* 1896.

STUDIES IN ECONOMICS AND POLITICAL SCIENCE

EDITED BY W. A. S. HEWINS, M.A.

Arrangements have been made for the publication of a series of books containing the results of researches in economic and political subjects conducted by the teachers of the London School of Economics and Political Science, or under their direction. The following volumes are in preparation:—

1. THE HISTORY OF LOCAL RATES IN ENGLAND. By EDWIN CANNAN, M.A., Balliol College, Oxford.

2. THE REFERENDUM IN SWITZERLAND. By SIMON DEPLOIGE, University of Louvain. Translated, with Introduction and Notes, by C. P. TREVELYAN, M.A., Trinity College, Cambridge.

3. SELECT DOCUMENTS ILLUSTRATING THE HISTORY OF TRADE UNIONISM. I. THE TAILORING TRADE. Edited by F. W. GALTON. With a Preface by SIDNEY WEBB, LL.B.

4. SELECT DOCUMENTS ILLUSTRATING THE STATE REGULATION OF WAGES. Edited, with Introduction and Notes, by W. A. S. HEWINS, M.A., Pembroke College, Oxford; Director of the London School of Economics and Political Science.

5. HUNGARIAN GILD RECORDS. Edited by Dr. JULIUS MANDELLO, of Budapest.

6. THE RELATIONS BETWEEN ENGLAND AND THE HANSEATIC LEAGUE. By Miss E. A. MACARTHUR, Vice-Mistress of Girton College, Cambridge.

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HISTORY OF LOCAL RATES IN ENGLAND

I

ANCIENT NON-STATUTORY RATES TO 1601

LABORIOUS students whose investigations have interested scarcely any one but themselves have been known to seek comfort in the assertion that truth is valuable for its own sake. I do not believe that this is the case. A great deal that is true is not worth knowing. The most inveterate bore is often the most truthful of men. All history should, I think, have some practical aim. Some moral, some lesson or guidance, should be afforded by it. Even if this is not true of all history, it is surely true with regard to economic history. It would be absurd to study a subject so dry, not to say so odious, as local rates except with a view to practical aims. We do not study such subjects from a love of truth in the abstract or to while away a wet Sunday afternoon, but because there are practical controversies about them, and we hope that we may learn something which may be of assistance in these controversies. Recognising this frankly, I intend to try to collect together those facts only which explain the origin and progress of the two great characteristics of our

rating system which give rise to most complaint. I mean, of course, the characteristic facts that rates are paid only in respect of certain kinds of property, and are levied from the occupiers and not the owners of that property. With the practical inferences to be drawn from the information I hope to furnish, I shall not meddle here. To do so would be to abandon the attitude of impartiality appropriate to the occasion; and besides, I think the practical inferences to be drawn are so clear that they scarcely need to be expressed.

Almost all the money raised by English local taxation at present is raised either by means of the poor-rate or by means of other rates which, though they have names of their own, are in reality nothing but additions to the poor-rate. It is consequently natural for the legal mind, which never goes behind a statute, to explain the fact that occupiers are rated in respect of certain property by a simple reference to the act of 1601, on which the poor-rate is based to this day. In June 1894 the deputy-chairman of the London County Council, in examination before the House of Lords Committee on Betterment, ventured to suggest that the reason people are rated on property is "because it is the best criterion of the measure of the ease with which a person can bear rating." Lord Salisbury remarked that this was "rather a formidable doctrine to lay down," whereupon the present Lord Chancellor said, "The reason you are rated is because the act of Elizabeth says you shall be."[1] But, first,

[1] *Report from the Select Committee of the House of Lords on Town Improvements* (*Betterment*), No. 292 of 1894, Minutes of Evidence, Questions 2011–14.

as the witness did not fail to point out, there must have been reasons for the act of Elizabeth; and, secondly, the act does not, as a matter of fact, say you shall be rated in the way you are rated. It says that the money required for poor relief in each parish shall be raised "by taxation of every inhabitant, parson, vicar, or other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods."[1] This surely is far from being a correct and adequate description of our present poor-rate. It is incorrect, because by no means every inhabitant, whether parson, vicar, or other, is taxed. It is inadequate, because occupiers of lands, houses, tithes, coal-mines, and saleable underwoods, are taxed on a peculiar and minutely regulated basis—the annual value of the thing occupied—whereas the words of the act say nothing about the basis of the taxation, and would by themselves cover an income-tax, a poll-tax, and many other taxes. The reference to the act of 1601 thus takes us a very little way. We want to know how and why that act came to say what it does say, how and why its words have come to be interpreted in the way they are interpreted, and how and why all other rates have been swallowed up by the particular rate established under it.

A preliminary question has to be answered. What is a rate? A kind of tax, no doubt; but what kind? From the phrase "rates and taxes," and the common grumble, "It isn't the taxes, it's the rates that I

[1] The words have been misquoted in Bott, *Poor-Laws*, 1st edition, and perhaps elsewhere (see Cowper, *Reports*, p. 559), "other" being inserted before "occupier," and the sense thus greatly altered.

complain of," it would be tempting to conclude that "rates" is merely another name for local taxes. Doubtless, "rates" are now practically synonymous with local taxes in England. But this is a mere accident. If a man has nothing but ducks, his poultry and his ducks are the same thing, but it does not follow that poultry is merely another name for ducks. It is only a few years since the London coal-duty was abolished, and that was certainly a local tax which no one would call a rate. In other countries local taxes not of the nature of rates flourish extensively. The real difficulty is not to find a local tax which is not a rate, but to find any tax which is not local. A New York State tax is local in relation to the United States, and so is a Prussian national tax in relation to the German Empire. A true imperialist would regard the insular imposts which we call "imperial taxes" as local; and if British and New Zealand taxes are local, there seems no reason why German and Austrian imperial taxes should not be looked upon as local. Moreover, while it is easy for a tax to be local without being a rate, it is at least logically conceivable for a rate to be world-wide.

The real difference between a rate and a tax which is not a rate appears to lie entirely in the manner in which the financial problem of raising money is approached. In the case of a tax, the taxing authority decides that individuals shall make particular payments on particular occasions, and the aggregate sum it receives depends on how much these payments add up to. In the case of a rate, the taxing authority decides how much money it wants in the aggregate, and this amount is raised by apportioning the pay-

ment of it between the various ratepayers in accordance with some definite standard made for the occasion or already in existence. Thus, in the case of a tax the procedure is by way of addition, and in the case of a rate by way of division; in the case of a tax the taxing authority hopes it will get a certain sum, in the case of a rate it knows that it will get it. All our national taxes would be turned into rates if Parliament merely decided that so many millions were to be raised from beer, so many from death-duties, so many from income-tax, and so on, and left it to the Treasury to impose the rates necessary in order to raise the sums prescribed.

In these days the yield of a tax can generally be estimated with such accuracy that the distinction is not of practical importance. It can make no difference whether the Chancellor of the Exchequer says, "An income-tax of 8d. will produce so many millions, which is what we require," or "We want so many millions, and that will necessitate an income-tax of 8d." But when all estimates of the yield of taxation were wild guesswork, and taxes had an extraordinary capacity for falling far below the estimates, the difference between the two methods was of the greatest moment. In the case of a large area like that of the whole country, it would evidently be impracticable to adopt the rate method by apportioning the payment of a lump sum among all the taxpayers. But in the case of an area small enough for the taxpayers to be known to the taxing authority and each other, and to feel a common interest in raising the sum required, the rate is the simplest and most obvious method of meeting common expenses that can possibly be

conceived. If, then, we were to argue on eighteenth-century principles, from an "original state of things" in which independent men began to combine in society, we should probably be inclined to place the origin of local rates, either in money or services, almost as early as the institution of civil government.

To do this, however, would be a mistake. Many of the most expensive institutions now maintained by local rates had no existence in the Middle Ages. Even the fifteenth-century citizen had not to provide for compulsory education, purification of sewage, street lamps, or police in the sense in which we now use the word. There were always roads, of course, but what were those roads like? Those who have contended that English roads were good in the Middle Ages must, I think, have done so without much personal acquaintance with the roads of to-day. You may travel many thousand miles and not find the smallest thing to suggest that the road was what we should consider tolerable centuries ago, and yet you will see vast quantities of evidence to show that it was thoroughly bad—in fact, not what a townsman would now call a road at all. For ninety-nine miles out of a hundred it must have been what rustics now call a "soft" or "green" road, in contradistinction to the "hard" or metalled road of the modern highway authority.[1] It keeps along the hillside regardless of gradient, because some embanking and draining would have been necessary on the flat land. It is sinuous

[1] Ploughing up the highway was an offence known to the law. In 1286 the commonalty of Cambridge were charged with ploughing up the highway to Hinton marsh.—C. H. Cooper, *Annals of Cambridge*, 1842, vol. i. p. 61.

owing to the effort to avoid every soft place; and where the adjacent landowners have observed the eighth commandment, it is excessively wide between the hedges, because on a "green" road the traffic is constantly endeavouring to find a place where previous passengers have not destroyed the surface. Every improvement obviously dates from the turnpike days. If we wish to picture an English road in the Middle Ages, we should think of what we now call a mere "track" across an open heath, or imagine a wide, little-used country road, with the narrow metalled strip in the middle entirely removed.

The cost of public works was to some extent defrayed by the benevolence of private individuals and religious houses. Testators bequeathed property for building or maintaining bridges, as in the case of the Bridge House estates of the city of London. Monks improved the roads in the neighbourhood of their convent; an excellent half-mile of road across the flood-lands of the Thames still testifies to the energy of the monks of Abingdon. The preamble of an act of 1554 (1 Mar., st. 3, c. 6) tells us not only that the road between Gloucester and Bristol, one of the most important cross-roads in the kingdom, had so fallen into decay that many passengers had lost their lives on it, but also that it had been formerly "well repaired by the devotion of divers good people."

The remainder of what we regard as the expenses of local government, so far as they existed, were borne on the broad back of the "feudal system." Consider the first general highway act, which was passed as late as 1555 (2 & 3 P. & M., c. 8), remember-

ing that it is to be looked on as an attempt to secure and extend what was regarded as the best custom, rather than as an extravagant innovation. It orders the constables and churchwardens to call together the parishioners once a year, and elect two honest persons to be surveyors or orderers of the works for amendment of the highways in their parish leading to any market town. The constables and churchwardens are to appoint four days for the amending of the highways, and "shall openly, in the church the next Sunday after Easter, give knowledge of the same four days, and upon the said days the parochians shall endeavour themselves to the amending of the said ways, and shall be chargeable thereunto as followeth: that is to say, every person for every plough land in tillage or pasture that he or she shall occupy in the same parish, and every other person keeping there a draught or plough, shall find and send, at every day and place to be appointed for the amending of the ways in that parish as is aforesaid, one wain or cart, furnished after the custom of the country with oxen, horses, or other cattle, and all other necessaries meet to carry things convenient for that purpose, and also two able men with the same, upon pain of every draught making default 10s.; and every other householder, and also every cottager and labourer of that parish able to labour and being no hired servant by the year, shall, by themselves or one sufficient labourer for every of them, upon every of the said four days, work and travail in the amendment of the said highways, upon pain of every person making default to lose for every day 12d.; and if the carriages of the parish or any of them shall not be thought needful by the

supervisors to be occupied on any of the said days, that then every person that should have sent any such carriage shall send to the said work for every carriage so spared two able men, there to labour for that day, upon pain to lose for every man not so sent to the said work 12d. And every person and carriage aforesaid shall have and bring with them such shovels, spades, picks, mattocks, and other tools and instruments as they do make their own ditches and fences withal, and such as be necessary for their said work: and all the persons and carriages shall do and keep their work as they shall be appointed by the said supervisors or one of them, eight hours of every the said days, unless they shall be otherwise licensed by the said supervisors or one of them."

I think every one will agree that all this reads a great deal more like an account of the feudal services of tenants on a manor than a description of a highway rate. There is no attempt to make the amount of service rendered vary with the varying requirements of different seasons and different districts. It is true that the lawyers held that, if the labour prescribed by the act was not sufficient to keep the roads in repair, the parishioners ought to give more labour;[1] but this was a legal counsel of perfection of no practical importance. The whole system was so alien to the system of rating that the "statute labour," as it was called, never developed into a rate. It lingered on to the present century,[2] alongside of turnpikes and rates.

Bridges too, which were much more expensive works in comparison with roads than they are now,

[1] See Dalton, *Country Justice*, ed. of 1742, p. 115.

[2] Till the passing of the act 5 & 6 W. IV., c. 50.

were generally maintained by obligations of a feudal character, particular bridges being burdens on particular lands.[1]

Thus it comes about that the importance of local rates is not so ancient a matter as we might be tempted to expect on general considerations. I doubt if any very clear and important cases of local rates are likely to be found earlier than the thirteenth century.

Plenty of such cases, however, existed in the middle of that century. The customs of Romney Marsh, which then were at any rate old enough to be described as "ancient and approved," required certain services from the men of the marsh which are marked by the distinguishing characteristics of a local rate. In 1250, we read, some dispute occurred between the twenty-four jurats of Romney Marsh and certain men of the marsh, who were bound to repair the sea-walls and watercourses according to the quantity of their lands and tenements. Sir Henry de Bathe, the justiciar, was appointed to hear and determine the contentions which had arisen, and issued an ordinance from which, as Coke says, not only other parts in Kent but all England received light and direction.[2]

According to this ordinance, "By the whole commonalty of the same marsh twelve lawful men may be chosen, to wit, six of the fee of the Archbishop of Canterbury, and six of the barony, which, being sworn,

[1] Lands so liable sometimes formed the basis of a kind of corporation. The "lands contributory to Rochester Bridge," for example, had two wardens, twelve assistants, and a commonalty. See 18 Eliz., c. 17, and 27 Eliz., c. 25.

[2] Sir William Dugdale, *History of Embanking and Draining of Divers Fens and Marshes*, 1662, pp. 17–19: Coke, *Inst.* iv. c. 62, p. 276.

shall measure the walls new and old, and those which ought to be new erected. And the same measuring should be done by one and the same perch, to wit, of twenty foots. And afterwards the same jurors upon their oaths also by the same perch shall measure by acres all the lands and tenements which are subject to danger within the same marsh: which measurings being done, the twenty-four by the commonalty first elected and sworn, having respect to the quantity of the walls, lands, and tenements which are subject to peril, by their oath shall ordain how much appertaineth to every one to uphold and repair the same walls. So that for the portion of acres of lands lying subject to danger there be assigned to every one his portion of perches by certain bounds."[1] If any man neglected to repair the portion assigned to him, the common bailiff might do the work, and charge him with double the cost. Where land was held in common by partners, a portion of sea-wall was to be assigned to these partners in common. No suggestion is made that the quality or value of the acres as well as their number ought to be taken into account, but an ordinance issued by Lovetot and Apulderfield in 1287, extending the laws of Romney Marsh westwards into Sussex, speaks of the walls being apportioned among individuals according to the extent and *value* of their acres (*juxta portionem acrarum suarum et valorem earundem*).[2] I do not think that the mere fact that the sea-walls themselves, instead of the money cost of maintaining them, were apportioned among the men of the marsh ought to prevent us from regarding this as

[1] *The Charter of Romney Marsh*, Latin and English, 1686, p. 12.
[2] *Ibid.*, pp. 49, 50.

an early sewers rate; and in any case before 1359 the practice of each man maintaining a particular portion of the defences seems to have been superseded by a system of money rates. A commission was issued in that year to the king's well-beloved and trusty Thomas Ludlow, Robert Belknap, and Thomas Culpeper, in consequence of complaints made by the Archbishop of Canterbury, who was lord of a portion of the marsh. This alleges, without any apparent justification, that the ordinance of Henry de Bathe provided for the election of a bailiff "to levy the assessments" (*ad scotta assessa levandum*) for the repair of the defences.[1]

In 1256, £20 19s. 2d. was levied from the county of Chester for the repair of Chester Bridge, "because the King had ascertained from the book of the Exchequer called Domesday that the men of the county were bound to repair the bridge."[2] According to the passage in Domesday referred to, but not quoted, a man was to be sent from every hide to repair the city wall and bridge,[3] so that we see here an old feudal obligation transformed into a county rate. There is nothing to show whether the £20 19s. 2d. was apportioned according to hides or in some other way.[4]

[1] *The Charter of Romney Marsh*, pp. 55–57.

[2] Madox, *Firma Burgi*, 1726, p. 89.

[3] "Ad murum civitatis et pontem reædificandos de unaquaque hida comitatus unum hominem venire præpositus edicebat. Cujus homo non veniebat dominus ejus XL solidos emendabat regi et comiti. Hæc forisfactura extra firmam erat."

[4] In 1287–8 an agreement was made between the barons, knights, and free tenants of the county and the mayor and city of Chester, by which the latter grant that they will repair a part of the bridge. "The expense thereof is also to be shared by all the town and foreinsec lands which, being comprehended in the book called Domesday in the Treasury of London, within the 52 hides reckoned

From 1334 onwards the fifteenths and tenths were levied as local rates. They were originally, of course, a national tax on movables, at the rate of one-tenth of the capital value in the cities and boroughs and lands belonging to ancient demesne, and one-fifteenth from the rest of the country. But after 1334 it became a settled principle that each Parliamentary grant of a fifteenth and tenth should be subject to the condition that the tax should be levied like the last, and not otherwise.[1] This was intended, or at any rate understood, to mean that the total sum collected should remain exactly the same, and be apportioned in exactly the same way between county and county, town and town, and even parish and parish. As the relative wealth of the different districts changed, the tax of course ceased to be collected at a uniform rate over the kingdom, and consequently

within the city of Chester, shall be found liable to pay tax. The county is burdened with the rest of the bridge."—Ormerod and Helsby, *History of Cheshire*, 2nd edit., 1882, vol. iii. p. 891.

[1] See Stubbs, *Constitutional History*, vol. ii., § 282, p. 599, lib. edit., and of the authorities there quoted, especially Brady, *Treatise of Cities and Boroughs*, 1690, p. 39. The grant of 1344 was in these terms: "And the said commons do grant to him for the same cause upon a certain form, ii Quinzimes of the Commonalty and ii Dismes of the Cities and Boroughs, to be levied in manner as the last Quinzime granted to him was levied, and not in other manner" (*Statutes of the Realm*, 18 Edw. III., stat. 2, c. 1). Similarly, in 1357: "The said commons have granted to our sovereign lord the King a quinzime yearly to be levied and gathered in the manner as the last quinzime granted to the King was levied" (*ib.*, 31 Edw. III., st. 1, c. 13); and two centuries and a half later, in 1623-4: "Three whole fifteens and tenths shall be paid, taken, and levied of the movable goods, chattels, and other things usual to such fifteens and tenths to be contributory and chargeable within the shires, cities, boroughs, towns, and other places of this your Majesty's realm, in manner and form aforetime used" (*ib.*, 21 Jac. I., c. 33).

came to possess the one essential characteristic of local taxation, diversity of rate as between place and place. The duty of the collectors in each parish was simply to apportion a fixed sum among the inhabitants, which is precisely the function of those who assess local rates. An inhabitant disproportionately assessed could go to the courts and demand redress on exactly the same grounds as those on which a modern ratepayer relies when he appeals against his assessment to the poor-rate. Madox quotes the case of one Johanna, widow of John Nicole, of Guildford, against the sub-collectors of that town. She appeared before the Barons of the Exchequer, by John of Holt, her attorney, and said for the King and herself, that, whereas the town of Guildford was assessed to the tenth at £15 2s. 10d., and that sum ought to be proportionately assessed among the men of the town according to the quantity of their goods, without favouring any one, and although the aforesaid Johanna paid the proportion rightly due from her, which amounted to 20s. if she was assessed like the other men of the town, to the aforesaid sub-collectors on the 30th of April, the aforesaid sub-collectors assessed the said Johanna to 40s. beyond the aforesaid 20s., in order to favour the other men of the town. The sub-collectors answered that the said Johanna was assessed just as the other men of the town were assessed, and the case went to a jury to decide the facts.[1] This happened in 1354.

Church rates were well established by the beginning of the fourteenth century. John of Athon, a canonist who wrote about the year 1340, says in his notes to

[1] Madox, *Firma Burgi*, pp. 281, 282.

the Constitutions of Otho and Ottobuoni: "Every parishioner is bound to repair the church according to the portion of land which he possesses in the parish, and in proportion to the number of animals he keeps and feeds there."[1] A constitution issued by John Stratford, Archbishop of Canterbury, in 1342, ordains that "as well the religious as all others that now have, or shall hereafter have, possessions, lands, or revenues which are not of the glebe of the churches to be repaired, or of the endowments that belong to them, in any parishes whatsoever of our province, whether they dwell in the said parishes or elsewhere, shall be obliged to pay with the other parishioners toward all the charges which are either of common right or by custom incumbent on the parishioners for the repair of the church and the ornaments belonging thereto, according to the quantity of the possessions and revenues which they have in the said parishes, as often as there shall be need for the same."[2] Enforcement of church rates belonged to the ecclesiastical authorities and courts, but they were none the less compulsory for that, and on one ground or another they occasionally came under the cognisance of the secular courts. An important case of this kind is recorded in 1370. A parish meeting had decided to raise £10 to repair the roof of a certain parish church. One of the parishioners objected to a distraint for 9s. which had been levied on him, upon

[1] "Credo tamen contra sc. quod unusquisque parochianus teneatur ad hoc juxta portionem glebæ seu terræ quam possidet intra ipsam parochiam et juxta numerum animalium quæ nutrit ibidem."—Lyndwood, *Constitutiones Legatinæ D. Othonis et D. Othoboni, cardinalium cum profundis annotationibus Johannis de Athona*, 1679, p. 113.

[2] Lyndwood, *Provinciale seu Constitutiones Angliæ*, 1679, p. 255.

the grounds that the collection should only be enforced by the ordinary, and that he had not assented to the rate. The collectors of the rate pleaded custom which had always existed time out of mind. Kirton, one of the judges, remarked, "There is a custom through the whole country which the laws call by-law, that is, by assent of neighbours to levy a sum to make a bridge, a causeway, or a sea-wall, and by their assent to assess each neighbour at a sum certain, for which they may distrain. And also if commoners have common rights in a place, they can by assent ordain that they shall not exercise the right in a certain parcel of land before a certain time, and if they do that they shall be distrained." In both cases, he thought, the assent of those who were present at a properly summoned meeting bound those who were absent. His colleague, Finchden, said, "If this ordinance concern a thing which would be to the common hurt, that is, for a bridge, to make a causeway or sea-wall, you are right; but if it be for their particular profit, as in your case of the common, no man will be bound but those who assent." In this case the £10 was raised by an assessment of 6d. in respect of each carucate of land, 1d. in respect of each head of cattle, and the same in respect of every ten sheep.[1] The canonist Lyndwood, writing about 1430, says that the quantity of a man's possessions and revenues should be estimated for rating purposes by their value.[2]

With our modern notions of the separate province

[1] *Year Book* (ed. 1679), Edward III., anno xliv., p. 19. Part of the translation of Kirton's opinion is from Chief Justice Tindal in Phillimore, *Burn's Ecclesiastical Law*, 1842, vol. ii. p. 388 *h*.

[2] "Quæ considerari debent secundum valorem reditus."—*Provinciale*, p. 255.

of imperial and local government, we find it strange to read of town fortifications paid for out of local funds, but this was the regular rule, and when other sources of income did not suffice, a rate could be raised for this purpose. There exists a royal letter of 1378 ordering that the walls of Chichester shall be repaired, and that "all persons whatsoever, religious or secular, who now have, or in future shall have, lands, tenements, and revenues or merchandise within the city or its liberty," shall contribute to the cost "according to their ability and possessions, privileged persons, the sick, and mendicant poor excepted." Similar letters were sent to other towns.[1]

The purposes for which a corporate town in the fourteenth or fifteenth century required money were indeed almost as multifarious as they are to-day, for though we have multiplied our wants, we have also relegated some expenses to the state, and others to private enterprise or benevolence. In many cases, no doubt, the corporate revenues and profits sufficed to defray all expenses. Even at the present day they are often sufficient to make it unnecessary to levy a borough rate, though no borough is rich enough to do without a rate for the expenses of its Council acting as urban sanitary authority. But at any rate in the poorer boroughs resort to local taxation was often necessary. In early times equal poll-taxes seem to have been levied. The London riot in 1196, of which William FitzOsbert was regarded as the instigator, is said to have been a revolt

[1] Rymer, *Fœdera*, R. iv. 52, and 49, 59 : O. vii. 185. As late as 1607 the inhabitants of Southampton had "a long time at their own cost and charge upheld and maintained the walls thereof, with many towers, turrets, bulwarks, great ordinances, powder, and other defensive artillery" (*Statutes of the Realm*, 4 Jac. I., c. 10).

of the poorer citizens against such a tax.[1] Poll-taxes in which persons were taxed according to their rank are found at a very much later period. At Ipswich in 1451 every portman was to pay 3s. 4d., every burgess 1s. 8d., and every foreigner 1s.; and in the next year every portman was taxed 1s. 8d., and every burgess 1s.[2] But by the fifteenth century, at any rate, the money for defraying the common burdens was, as Madox says, usually raised by an apportionment made amongst the townsmen according to each man's ability and substance.[3] There is no town, so far as I know, of which we have better records during this period than Ipswich. Here are some entries in Bacon's *Annals* relating to the proceedings of the governing body of the town with regard to rates from 1452 to 1488:—

Oct. 13, 1452.—Every burgess of this town shall pay ¼ of a 15th for certain affairs of this town, and collectors specially named.

Jan. 21, 1454.—Accompt shall be made before auditors assigned of the money received for the suits between this town and that of Bury St. Edmunds and the prior of Ely.

May 17.—Six collectors named to assess all the inhabitants of this town at ¼ quinzieme for the suit aforesaid.

Jan. 7, 1455.—Every burgess of this town shall pay ½ of a quinzieme towards the suits between this town

[1] Stubbs, *Constitutional History*, vol. i. § 161, p. 657, lib. ed.

[2] *The Annals of Ipswich: the Laws, Customs, and Government of the same, collected out of the Records, Books, and Writings of that Town, by Nathaniel Bacon, serving as Recorder and Town Clerk in that Town, anno dom.* 1654. Edited by W. H. Richardson, 1884.

[3] *Firma Burgi*, p. 280.

and the town of Bury, and every foreign burgess shall also pay thereto.

April 11.—The collectors of money of certain particular parishes in Ipswich for the suit with Bury have a day set to bring in their accounts.

March 10, 1458.—The burgesses of this town shall pay ¼ of a 15th for the suit with the prior of Ely, and collectors are appointed.

May 5.—All burgesses refusing to pay their part of the said assessment shall be disfranchised.

Oct. 2.—Collectors for ¼ of a 15th granted for the suit with the prior of Ely.

Dec. 14.—Collectors made for ¼ of a 15th for the charges of a suit wherein John Geete was condemned against Gregory Lanham, and for other urgencies of the town.

Oct. 4, 1459.—A sum of money assessed upon particular persons named for the maintaining of the suit [with the king].

Dec. 30, 1472.—Auditors appointed and collectors of the contributions of the several parishes for the repair of the common quay.

March 7, 1485.—Assessors named for the charges for renewing the town charter, and the serjeants are ordered to levy the same.

June 26, 1486.—Assessors named for a sum of money for the king's entertainment at his next coming.

March 13, 1487.—Ten assessors named for 50 marks *pro regardo Domini Regis* when it shall be demanded.

Jan. 8, 1488.—An assessment shall be made for the town charter renewing, and assessors and collectors mentioned and named in every parish.

May 30.—An assessment shall be made for a 10th

and 15th for the king, and assessors and collectors nominated in each parish.

We need scarcely go further to convince ourselves of the frequency of rates in Ipswich before the era of the poor-rate. Several of the later entries, however, are worth quoting for various reasons. In 1495 occurs an excellent example of the use of the fifteenth and tenth for purely local purposes. "Assessors and collectors in each parish for a moiety of a tenth and a fifteenth for the repair of the new mill, the whole sum being £18 4s. 6d." The practice, which reminds us of the modern French *centimes additionels*, was not confined to Ipswich. It prevailed in London at least as late as 1587.[1] In 1538 Ipswich levied a distinctly sanitary rate. Bacon's entry is: "Constables assigned to several wards to remove nuisances, and to levy money to pay carts for their carriage of the filth away." In 1545 we get a little more light as to the principle followed in assessing the rates. Every portman was to pay 10s., and every one of the four-and-twenty, 5s.; "and every of the commons shall be rated according to their substance by two honest persons within their parish." No doubts as to the

[1] See *Orders appointed to be executed in the City of London for setting Rogues and Idle Persons to Work, and for Relief of the Poor*, 1587, reprinted 1793:—"§ 57. For the provision of the said stock to the accomplishment of the said good works, there may be granted by the body of this city two fifteens, to be assessed and levied in usual manner, whereof the one to be paid as speedily as may be, the other one at the end of six months." In 1614 Ipswich used the subsidy in the same way as the fifteenths. A benevolence of £200 was to be rated by the subsidy, "and if the same fall short," says Bacon's entry, "it shall be rated upon the better sort of the inhabitants to make up the sum."

legal powers of the governing body to impose rates seem to have been felt till 1549. In that year assessors were appointed "to assess the burgesses and inhabitants" to pay "scott and lott for the town debts. And the bailiffs shall assess the assessors. Provided if the order be found contrary to the king's laws, the same shall be void." The doubts must have been set at rest, as the order was confirmed in the next year, and the precedent was followed in 1558. In 1592 there was rating for a preacher's wages, and in 1597 the burgesses' salary was rated on the inhabitants. In those days ratepayers appear to have been expected not only to pay, but to refrain from grumbling, for we find that, on 4th December 1573, "Richard Golty, one of the burgesses of this town, being allotted to the sum of 40s., did upon the 10 of October, in the presence of two persons of credit, say that the scott and lott rated on him was done against reason, conscience, charity, and honesty; and being convicted thereof, he was fined £5, and ordered to pay the said 40s."

It would have been a miracle if Tudor legislation had succeeded in creating a rate altogether unaffected by the uninterrupted rating practice of three centuries. To understand our present system, based upon the act of 1601, it is therefore necessary to know something about the principles on which these early non-statutory rates were apportioned.

The sewers-rate of Romney Marsh presents no difficulty. It was clearly governed by the principle that each person whose property was benefited should pay a proportion governed by the acreage, and afterwards the value, of that property, in comparison with the

whole of the property benefited. But if we look at the other rates through modern spectacles, the principle on which they are based is not very evident. The cloud which obstructs our vision will disappear, however, if we once abandon the pernicious modern habit of asking *what* was ratable. It is never things, but always persons, that pay rates and taxes, and in the fourteenth or even the sixteenth century the metaphor which attributes payment to the thing in respect of which the person is taxed had not taken possession of the ordinary mind as it has now. In the simplest form of rating there is nothing in the nature of an assessment or valuation list made up by a modern assessment committee. The total sum to be raised is apportioned directly upon the contributors as the assessors think fit or the common agreement decides. It seems quite clear that in the fourteenth and fifteenth century the accepted view was that each inhabitant should pay according to his ability or substance,[1] for in those days ability and substance meant much the same thing: the man who has a large income without having a large capital is a product of modern civilisation. Something in the nature of a valuation list soon sprang up, not because there was as yet any idea that the things of which a man's substance consists ought to be rated, but because the assessors wanted some kind of guide as to the relative ability or substance of the ratepayers. In a purely

[1] In Latin, "juxta facultates." See the letter to Chichester, quoted above, p. 17, and another in Rymer, *Fœdera*, R. vol. iii. Part i. p. 57, A.D. 1345, giving directions for the reassessment of Tamworth to the fifteenth after a fire:—"Vobis mandamus quod omnes et singulos homines dictæ villæ juxta facultates suas quas modo habent de novo taxari."

agricultural community, where every person of ability to pay is a farmer, nothing can be more natural than that the assessors, in forming their estimate of relative ability, should consider the number and quality of the acres cultivated by each, and perhaps also the number of sheep and cattle pastured. In a town, an equally obvious guide as to the substance of the inhabitants is afforded by the size or value of the houses occupied.[1] When this has once become the settled custom, it is supposed by a natural confusion of mind that the acres and the houses are taxed, and any attempts to carry out the original principle of rating according to ability derived from every source are strenuously resisted by the parties interested. The owner of lands or houses which he has let for a rent objects to being rated in accordance with his whole substance, on the ground that the rates on his lands and houses have

[1] Even the fifteenths and tenths, which were in their origin fractions of movable property only, seem to have been assessed in accordance with the annual value of tenements occupied before they ceased to be granted. The language of Parliament is vague. In 1562–3 (by 5 Eliz., c. 31), for example, it grants "two whole XV^{nes} and X^{ths} to be payd, taken, and levied of the movable goods, catalles, and other things usual to such XV^{nes} and X^{ths} to be contributory and chargeable." Scattered allusions show that the "other things" had long included property occupied. We find, for example, in 1377–8, the revocation of a writ which exonerated the chancellor and scholars of Cambridge University from tenths and fifteenths in respect of their tenements, possessions, and books (Cooper, *Annals of Cambridge*, 1842, vol. i. p. 116). In 1385 the exemption was re-established, tenements, schools, and books being mentioned (*ibid.*, p. 129, *cf.* p. 197). Orders of the city of London issued in 1587 (§ 58; see above, p. 20 *n.*) speak of foreigners being contributory to the fifteenths "by the rate of their houses." In a church-rate case heard in 1611, the court talked of "a rate imposed according to the value of the land, and that in the nature of a fifteen" (Bulstrode, *Reports*, i. 20).

already been paid by his tenants.[1] The tradesman, the money-lender, and the salaried servant or official decline to pay their full proportion, on the ground, as they say, that it has never been the custom to rate stock-in-trade, money, or salaries. On the other hand, by way of compensation, whether it acquiesces willingly in these contentions or not, the taxing authority insists on having rates in respect of all the lands and houses within its jurisdiction from the occupiers, whether the ability or substance of those occupiers is indicated by the value of their occupations or not, and whether they are resident inhabitants or not.

The whole process may be seen going on in Coke's report of the famous case of Jeffrey, which came before the King's Bench in 1589.

The church of Hailsham was out of repair, and it was estimated that the cost of repairing it would be not less than £70. The churchwardens "for the time being, *anno domini* 1589 and two years before, with the assent of the greater part of the parishioners of the said parish, *juxta quantitatem et qualitatem possessionum et reddituum infra dictam parochiam existentium*—according to the quantity and quality of the possessions and revenues within the said parish—determined and agreed to make a taxation for the repair of the said church." Notice of the parish meeting was given in the church and proclaimed in the market, and on the appointed day "the churchwardens and the greater part of the parishioners of Hailsham who were there met together, made a tax,

[1] Lord Mansfield said in 1776, "The landlord is never assessed for his rent, because that would be a double assessment, as his lessee has paid before" (Cowper, *Reports*, p. 453).

scil., of every acre of marsh land 4d., and of every acre of arable land 2d., to be paid by the occupiers of them in Hailsham;" and "all the said tax of the said town did not exceed the sum of £50." Now one William Jeffrey, gentleman, who resided, not in Hailsham, but in Chiddingley, some miles away, both owned and occupied 30 acres of the marsh land and 100 acres of the arable land so rated. He objected to pay his 26s. 8d., on the ground that he was not a parishioner of Hailsham. Suffering defeat on this point before the spiritual court, he invoked the civil, but met with no better success. After taking the opinion of the ecclesiastical lawyers, the court decided that he was a parishioner and liable to be rated. "It was answered and resolved, first, that although the house wherein Jeffrey dwelt be in another parish, yet forasmuch as he had lands in the parish of Hailsham in his proper possession and manurance, he is in law *parochianus de Haylesham.* For the place where he lies, sleeps, or eats, doth not make him a parishioner only; but also, forasmuch as he manures lands in Hailsham, and by that is resident upon it, that makes him a parishioner of Hailsham also as to this purpose. If," continued the court—and here no doubt is the crucial point—"in this case Jeffrey should not be charged to the reparation of the church of Hailsham for those lands which he himself occupies there, no person would be charged for them, upon which great inconvenience would ensue; for one who inhabits in the next town may occupy the greatest part of the lands in another town, and so churches in these days will come to ruin." One of Jeffrey's complaints was that the churchwardens had said that he "occupied or

received rent" for the 130 acres, whereas it would, he alleged, "be against law and reason, and against the common experience of all England," that he should be rated if he had let the land. In response to this complaint, the court, which had not then the horror of giving unnecessary decisions it now feels, resolved that "when there is a farmer of the same lands, the lessor who receives rent for them shall not be charged for them in respect of his rent, because there is an inhabitant and parishioner who may be charged, and the receipt of the rent doth not make the lessor a parishioner." While thus throwing over the old principle in favour of the new and more convenient practice, the court was still willing to do lip-service to the old principle, for it observed, "In this case the charge is on the person, and not on the land, but is on the person in respect of the land, for the more equality and indifferency."

Coke was counsel in this case himself, and he says at the end of his report, "Note, reader, this is a good case to many purposes, and therefore well observe the consequences of it."[1]

[1] *Reports*, Pt. v. pp. 67, 68.

II

MISCELLANEOUS STATUTORY RATES TO 1640

THE unsophisticated mind, which cherishes the delusion that our financial institutions have been created by politicians instead of by the force of circumstances, would naturally suppose that as soon as we come to rates imposed or regulated by statute, we should find no difficulty in discovering how rates were assessed and upon whom they were laid. This expectation would be disappointed. The early statutes take a great deal for granted, and are often least explicit just at the point where we most desire information.

The first of them is the sewers act of 1427 (6 Hen. VI., c. 5), which authorised the king to appoint commissions to supervise works for sea defence wherever they might be required. Within their several jurisdictions the commissioners were to be empowered to inquire by whose default damages had arisen, and "who doth hold lands and tenements, or hath any common of pasture or fishing in those parts, or else in any wise have or may have the defence, profit, and safeguard as well in peril nigh as from the same far off, by the said walls, ditches, gutters, sewers, bridges, causeys, and weirs, and also hurt or commodity by the same trenches, and there to distrain all them for the quantity of their lands and tenements, either by the number of acres or by their ploughlands, for the rate of the portion of their

tenure, or for the quantity of their common of pasture or fishing, together with the bailiffs of liberties and other places . . . to repair the said walls, ditches," and so on, "so that no tenants of lands or tenements, nor any having common of pasture or fishing, rich or poor, nor other of what condition, station, or dignity which have or may have defence, commodity, and safeguard by the said walls," and all the other things, "or else any hurt by the said trenches, whether they be within liberties or without, shall in any wise be spared in this." Necessary and convenient statutes and ordinances might be made by the commissioners according to the laws and customs of Romney Marsh, and they were to hear and determine all complaints according to the law and custom of England and the custom of Romney Marsh.

After being renewed several times, this act was superseded by the 23rd of Henry VIII., c. 5 (1531–2), which authorises the commissioners to inquire "who hath or holdeth any lands or tenements or common of pasture or profit of fishing, or hath or may have any hurt, loss, or disadvantage, as well near to the said dangers, lets, and impediments, as inhabiting or dwelling thereabouts by the said walls . . . and all those persons and every of them to assess, charge, distrain, and punish as well within the metes and bounds of old time accustomed as elsewhere within our realm of England after the quantity of their lands, tenements, and rents by the number of acres and perches after the rate of every person's portion, tenure, or profit, or after the quantity of their common of pasture or profit of fishing or other commodities there." If the tax on any lands, tene-

ments, or hereditaments was not forthcoming, the commissioners might "decree and ordain" them from their owners. Crown land was to be subject to the same laws as all other land.[1]

It is evident that the general principle of the early sewers rates or taxes for sea defence was that they should be levied in respect of all kinds of property liable to danger, in proportions determined by the extent or value of that property. But the ordinances and statutes certainly do not make it very clear to the modern mind from whom the taxes were to be levied when the owner and the occupier or tenant were different persons. On this point we may take the opinion of Mr. Serjeant Callis, who delivered lectures on the Statute of Sewers (23 Hen. VIII., c. 5), at Gray's Inn, in August 1622. As he was for many years a commissioner of sewers in his native county of Lincolnshire, he must have been acquainted with the practice as well as the strict law of the matter. He says that we must "distinguish and make a difference between annual repairs in ordinary things and extraordinary repairs. For to furnish the defence with petty reparations, they shall be laid only upon the lessee for years or for life; but if a new wall, bank, or goat or sewer, be to be built new and erected, or if the ancient defences be decayed in the main timber, or in the principal parts thereof, here as well the lessor as the lessee shall be put to the charge, for these things be not ordinary and annual charges, but do reach from the beginning of the lease to the top of the inheritance.

[1] Before this time the king had often voluntarily contributed his share, recognising that the sea would not respect his lands any more than that of his subjects. See Dugdale, *Embanking*, pp. 88–90.

As for petty reparations, they are by intendment to continue but for a short time, which are likely to be spent during the term and lease; but these new defences are apparently done to save the inheritance." He quotes as analogous the case of landlord's and tenant's repairs to a house, and concludes that "in petty annual and ordinary repairs the lessee alone shall do the same; but where the same wants in great timber or when a new defence is to be built, they shall both be at the charge." The fact is that the commissioners had a very wide discretion, and could, in Callis's words, apportion the tax "as in justice, discretion, and true judgment is requisite." [1]

Just before the Statute of Sewers comes the Statute of Bridges (22 Hen. VIII., c. 5), passed in 1530–1, because, as the preamble says, "in many parts of this realm it cannot be known and proved what hundred, riding, wapentake, city, borough, town, or parish, nor what person certain or body politic, ought of right" to repair bridges which had fallen into decay. It is easy to believe that a good stone bridge would often outlast the memory of the oldest inhabitant, especially when he had an interest in forgetting. For a remedy the act provides that in all cases where it is doubtful on whom the obligation to repair a bridge lies, "the said bridges, if they be without city or town corporate, shall be made by the inhabitants of the shire or riding in which the said bridge decayed shall happen to be; and if it be within any city or town corporate, then by the inhabitants of every such city or town corporate." It then gives the justices of the counties and

[1] *Reading on the Statute of Sewers*, 1647, pp. 110, 111; 2nd edit., pp. 141–143.

towns power and authority to call before them the constables, or else "two of the most honest inhabitants," of every town or parish within the area chargeable, and with their assent "to tax and set every inhabitant in any such city, town, or parish within the limits of their commissions and authorities to such reasonable aid and sum of money as they shall think by their discretions convenient and sufficient for the repairing, rectifying, and amendment of such bridges." After this taxation has been settled, the justices are to "cause the names and sums of every particular person so by them taxed to be written in a roll indented." The act is extremely minute on many points of detail which seem unimportant to us, but it does not tell us who the "inhabitants" were, nor on what principle the justices were to proceed in apportioning the tax among them. Coke, in his *Institutes*, says that the word "inhabitant" does not include servants and such-like persons who have nothing upon which distraint could be levied, and that it does include a non-resident who has lands or tenements in his own possession and manurance within the area of liability. Such a non-resident, he adds, "is an inhabitant both where his person dwelleth and where he hath lands or tenements in his own possession within the statute."[1] His opinion as to the ratability of non-resident occupiers is founded on Jeffrey's case, not on anything in the act itself, nor on any legal decision under it. He also remarks that the taxation cannot be set on the hundreds, parishes, and towns in lump sums, but must be assessed on individual inhabitants. This is doubtless the true meaning of the

[1] *Institutes*, ii. p. 702.

act, but all the same the practice was to rate the areas in lump sums, and leave them to apportion these sums among the inhabitants as they thought fit.[1]

An act of a local character (23 Eliz., c. 11), passed just fifty years later, shows that in taxing and setting each inhabitant to a reasonable aid the justices were expected to follow well-known precedents. A dispute had broken out between Cardiff and Glamorgan about the duty of repairing the bridge at Cardiff. "Such doubts and ambiguities," the preamble of the act says, were discovered "touching certain words and sentences" in the Statute of Bridges, "that more money was like to be spent in the determining and explaining of the same than haply might have sufficed to have re-edified the said bridge." To put an end to this unhappy state of affairs, Parliament declared that of right the building of the bridge belonged to the town without all doubt or controversy, but at the same time it ordered the county to bear five-sixths and the town only one-sixth of the cost, in consideration of "the poor estate of the said town of Cardiff, and the inability thereof to perform so great a charge." To avoid any "doubts and ambiguities" as to the method of raising the contributions of the town and the county, it went on to enact that the justices in the county and the mayor and bailiffs in the town were "to rate and assess the county aforesaid, with the several hundreds, and every town corporate, parish, village, and hamlet within the same, and every inhabitant and dweller within every and any of them,

[1] See, for a Norfolk example in the first half of the seventeenth century, Bodleian MS., Tanner, 311, f. 257. The practice seems to have been first legalised in 1702 by 1 Ann., c. 12.

to such reasonable sum and sums of money as to them shall be thought meet and convenient, in due and proportionable manner, according as rates, tasks, and tallages have been before this time used to be there rated and levied, or as near thereunto as they can." If we suppose, as we reasonably may, that this provision was intended to declare the meaning of the Statute of Bridges rather than to alter or add to it, we may infer that in 1580 good authorities were of opinion that the taxation under that statute should be apportioned as rates, tasks, and tallages had usually been apportioned. Thus the statute, instead of clearing anything up, merely throws us back on pre-existing custom.

Close upon the Statute of Bridges follows an act for building county jails (23 Hen. VIII., c. 2), passed in 1531–2. This authorised the justices of twenty-five of the counties to call together the high constables, tithing-men, or borough-holders, of every hundred, lathe, or wapentake of the shire, and by their assents, agreements, and discretion, tax and set every resident in the shire having land, tenements, rents, or annuities of estate of inheritance or for time of life to the clear yearly value of 40s. or above, or being worth in movable substance the clear value of £20 or above. Here is one bright spot in the midst of obscurity. The persons to be taxed—owners of property real and personal, "resident," not "inhabiting," in the shire—are plainly specified, and it is clearly implied that they are to be taxed in proportion to the value of the income derived from their property, movables being assumed to produce an income of 10 per cent. on their capital value.

The statute next in order, passed in the following year (24 Hen. VIII., c. 10), leaves everything undetermined. It enacts that the tenants and inhabitants of every parish, township, hamlet, borough, or village with more than nine inhabited houses, shall, "at their own proper costs, charges, and expenses, provide, make, or cause to be made one net" for the destruction of choughs, crows, and rooks, which "do daily breed and increase" throughout the realm, and "do yearly destroy, devour, and consume a wonderful and marvellous great quantity of corn and grain of all kinds," besides causing a "marvellous destruction and decay of the covertures of thatched houses, barns, ricks, stacks, and other such-like."

Three years later we find an act (27 Hen. VIII., c. 63, 1535–6) regulating the government of Calais, and providing for its representation in Parliament. This prescribes that the necessary 2s. a day for the wages of the burgesses in Parliament shall be "levied in such manner of form as within other cities and boroughs within this realm is used and accustomed." The same reference to well-established custom is found in the act of 1543–4 (35 Hen. VIII., c. 11), making provision for the payment of the representatives of Wales. The sheriffs of the twelve Welsh counties and Monmouthshire are to gather and levy the fees of the knights of the shire from "the inhabitants of the said twelve shires, and of the said county of Monmouth, which ought to pay the same." The boroughs which did not send burgesses of their own to Parliament were grouped for electoral purposes with the county town, and so, in order to provide for the wages of the burgesses in Parliament, the justices

were to "lot and tax every city, borough, and town," and the "rates so rated and taxed in gross" were to be "again rated and taxed on the inhabitants of every of the said cities and boroughs by four or six discreet and substantial burgesses of every the said cities and boroughs in Wales thereunto named and assigned by the mayor, bailiffs, or other head officers of the said cities, towns, and boroughs for the time being."

An act of 1545 "for the marshes besides Greenwich" (37 Hen. VIII., c. 11) says that most of the owners of the said marshes pay "a rate for an acre" towards the repairing of the banks which protect the land from the tide, "yet some owners thereof be which have not nor will not pay anything." These refractory individuals are therefore made liable to distraint.

More interest attaches to an act of 1545–6 (37 Hen. VIII., c. 14) "for Scarborough Pier." This recites that formerly when the harbour was in good condition the inhabitants and dwellers were prosperous, "and also all the owners of all the messuages, lands, and tenements within the precinct of the said town did set and let their said messuages, lands, and tenements at great rents or farms, to their great advantages and profits," but now that the quay or pier had been partially destroyed and the safety of the harbour impaired, the inhabitants and dwellers were impoverished, and the rents and farms were hindered and diminished. Parliament thereupon considered that if the pier were repaired, the lands and houses "might be set or letten for much greater rents or farms," and also that the tenants and farmers were

not able to repair the quay unless the owners were "compelled to be yearly contributors and helpers." It therefore authorised the bailiffs, coroners, and searchers of occupations in Scarborough to appoint two masters or keepers of the pier, and enacted that these masters or keepers and their successors, should yearly levy, towards the repair and subsequent maintenance of the pier, one-fifth of the rents receivable by "all and every person and persons being owner or owners, and having estate of inheritance, or being tenant by the courtesy or tenant in dower of any messuage or messuages, tenement or tenements, or any kind of rents, garthings, orchards, or other lands, grounds, or hereditaments set, situate, or lying within the precincts, limits, or bounds of the said town of Scarborough, or the liberties and jurisdiction of the same, or of any kind of rent or rents being due to be paid forth, or for any of the same." The fifth was to be collected from the farmers or occupiers, but it is provided that every occupier holding under a landlord, upon paying the fifth part of his rent to the masters of the pier, "shall be thereof and for so much clearly acquitted and discharged against the owner" from whom he holds, "any usage, custom, law, covenant, indenture, obligations, or bonds to the contrary made or hereafter to be made in any wise notwithstanding." To make a long story short, tenants were allowed to deduct the fifth from their rents, and all contracts to the contrary, past, present, and to come, were rendered void. If any owner occupied or held his property in his own hands, he was to pay the fifth part of so much rent as it "may be reasonably let to farm for, as by the valuation of ten discreet persons

of the same town shall be adjudged without fraud or coven."[1]

In setting aside past and future contracts on the part of tenants to pay rates, this act is unique, but the paving acts of the period afford examples of the practice of authorising deductions from rent where no such contracts existed. It is not very easy to see how a road through a town came to be distinguished from a highway in the country, but it seems to be the case that the duty of repairing the streets in a town lay upon the owners (not on the occupiers) of the property abutting upon them. The liability of the corporation was often admitted in the case of large public places, like market squares, but not in that of ordinary streets. The owners on each side were expected to pave the way as far as the channel, which in those days, of course, was in the middle of the road, not on each side between the carriage-way and the footpaths. The enforcement of this obligation, if it is not exactly the same thing as the imposition of a rate apportioned according to frontage and width of street, is very closely analogous, and in later times it certainly developed into a rate. The first paving act in the *Statutes of the Realm* was passed in the year 1532–3 (24 Hen. VIII., c. 11). It recites that the common highway between Charing Cross and the Strand Cross is "very noyous and foul, and in many places very jeopardous" to passengers on foot or

[1] The 4s. in the pound being fixed, whatever the requirements of the pier might be, was, strictly speaking, a tax rather than a rate. It was, however, a tax in respect of things usually ratable; and from the fact that the owners were to be "contributors and helpers" with the tenants, we may gather that the proceeds went in aid of an ordinary rate.

horseback, because "the landlords and owners of all the lands and tenements next adjoining" it have been "remiss and negligent, and also refuse and will not make and support the said highway with paving, every of them after the portion of his ground adjoining." It is therefore enacted that "all and every person and persons, their heirs and successors, the which now, or at any time from henceforth, shall be seized in possession or in use of any manor, lands, or tenements in any wise adjoining to the said highways . . . of any estate of fee-simple, fee-tail, or for time of life, shall . . . sufficiently pave or cause to be paved with stone the said highway along from his or their lands or tenements adjoining to the said highway unto the midst of the same way, in such and like form as the high street between Temple Bar and Strand Cross aforesaid is paved." The penalty for neglecting to pave the street in this manner before Michaelmas 1533, and for failing to maintain the pavement afterwards, was 6d. per square yard. The next act (25 Hen. VIII., c. 8), passed in the following year, "for paving of Holborn," complains of the "lack of renewing" of the pavement of the street by "the landlords which dwell not within the City." In spite of its title, this act was really applicable to the whole of the city and its suburbs. With regard to Holborn, it follows the Strand act, and then gives the mayor and aldermen power to inquire, by the oath of twelve men of the city, "as well of them that have not paved according to the provision aforesaid, as also of them that remissly or insufficiently shall hereafter maintain the same pavement or any other pavement within the said city and suburbs of the same." Any one in

default might be fined by the mayor and aldermen according to their discretions. In Southwark, outside the jurisdiction of the city, the same powers were given to the justices. It was further provided that if the lessees of any lands "do sufficiently pave or repair before their mansions or dwelling-places the streets which have used to be paved, that then they and every of them shall defalk, abate, and retain in his or their own hands as much of the rents due to the lessors as they can prove to have expended on the same paving." The other eight Tudor period paving acts printed in the *Statutes of the Realm* all agree in making the landlord liable, and six of them contain the provision allowing the tenants to do the work and deduct the outlay from their rents. Of the six, however, one (13 Eliz., c. 24), passed in 1571 for paving Ipswich, imposes a true money rate for defraying the expense of paving in front of parish churches, and in respect of this it fails to make any provision for a deduction from rent. The streets in front of the churches were to be paved "at the charges of the parishioners of every such church, . . . the charges thereof to be indifferently rated by the twelve headboroughs."

Returning from this digression on paving expenses, we come to an act of 1553 (1 Mar., st. 2, c. 32) for repairing the causeway between Sherborne and Shaftesbury.[1] The preamble of this act says it is thought meet that the cost of putting the causeway in repair should be borne by the "owners, tenants, farmers, and inhabitants of the manors, lands, tene-

[1] This act is not printed in its place in *Statutes of the Realm*, but it will be found recited in full in 1 Mar., st. 3, c. 5.

ments, and parishes lying nigh to the said causeway and highway on either side of the same," and "the owners, tenants, farmers, and inhabitants of the towns of Shaftesbury and Sherborne." The act itself, however, says the cost is to be borne by "the owners, tenants, and farmers of the lands, tenements, and hereditaments lying nigh to the said causeway and highway on either side of the same, and by the inhabitants of and within the said towns of Shaftesbury and Sherborne, and by the owners, tenants, and farmers of the manors, lands, tenements, and hereditaments, and by the inhabitants of and within the forest of Gillingham" and certain liberties and hundreds. The justices of Somerset and Dorset are to make assessments and taxations of money or otherwise on these persons, "having good and indifferent respect to the several abilities of them and every of them." Probably no importance is to be attached to the difference in the description of the ratepayers in the preamble and the act itself. On the whole it seems probable that both the "manors" adjoining the highway and "the owners, tenants, and farmers" of the towns of Shaftesbury and Sherborne, spoken of in the preamble, are not mentioned in the act merely because the draughtsman considered they were covered by the other expressions, "lands, tenements, and hereditaments," and "inhabitants." The word "owners" is probably intended merely to include persons occupying their own lands. Whoever was to pay, it is plain that the principle on which the payment was apportioned was the relative ability of the contributors.

Another local highway act (1 Mar., st. 3, c. 6) passed in the following year (1554) does not make the same

rather unsuccessful attempt to be explicit. It merely provides that the inhabitants of the cities of Bristol and Gloucester, with the hundreds which lie between them, shall be charged with the repair of the Gloucester and Bristol road. It authorises the justices to rate and sess the inhabitants, but says nothing about the distribution of the burden among them.

An act of 1555 (2 & 3 P. & M., c. 1) "for the re-edifying of castells and forts, and for the enclosing of grounds from the borders towards and against Scotland," that is to say, in Northumberland, Cumberland, Westmorland, and Durham, is on the model of the Sewers Acts. It authorises the appointment of a commission "to inquire by the oaths of the honest and lawful men" of the four counties, "by whom the truth may best be known, who hath or holdeth any lands or tenements or useth or perceiveth any common of pasture or other profit apprender in the said counties or bishopric throughout the whole parts of the same, and all those persons and every of them or such of them, to tax, assess, charge, distrain, and pain by the number of acres and perches after the rate of every person's profit, rent, or tenure, or after the quantity of their common of pasture or profit apprender or other commodities there." Crown lands were to be liable to rating in the same way as others, and the tenants of such lands might deduct the rates from their rents.

The act of 1532 for destroying crows was allowed to expire by effluxion of time; but in 1566 a more comprehensive act "for preservation of grain" (8 Eliz., c. 15) revived its provisions with regard to the village net, and enacted further that, in order to

raise money to be paid away in rewards for the eggs and heads of birds and vermin, including foxes, the churchwardens, with six other parishioners co-opted by them, should annually, and as often as might be necessary, "tax and assess every proprietor, farmer, and other person having the possession of any land or tithes within their several parishes, to pay such sum of money as they shall think meet, according to the quantity and portion of such lands or tithes as the same person so assessed do or shall have or hold." Of course the term proprietor is here qualified by the having possession of land, so that a landlord not occupying his land would not be liable to be rated. It is only natural that a rate to be expended so directly for the benefit of agriculturists should be levied from them alone.

In 1571 (by 13 Eliz., c. 18) it was enacted that the river Lea should be cleansed of all its shelves and shallows "at the costs and charges of the country," the freeholders and inhabitants being rated by the sheriffs and justices of the three counties concerned, and certain commissioners appointed by the Lord Chancellor; but this somewhat vague provision was greatly qualified by the condition that no one should be charged except in so far as he would be chargeable under the Statute of Sewers.

In 1575–6 the legislature was forced to take notice of a difficulty in the enforcement of the labour required by the Highways Act, which is closely connected with the question, What constitutes an inhabitant for the purposes of rating? The statute of 1555 was amended by an act (18 Eliz., c. 10) which, among other things, explains that persons who occupy a plough-land

divided between several parishes are to be chargeable in the parish where they dwell, and that persons who have several plough-lands, each in a different parish, are to be chargeable just as if they were resident parishioners of the parish in which each plough-land lies—"in such manner and form as if he and they were a parishioner dwelling within the parishes where the same several plough-lands do lie."

Curiously enough this same act contains a local provision or addendum, in which the difficulty about residence was entirely overlooked. The addendum presents several points of interest. It says: "And whereas the ferry or passage called Kingsferry within the Isle of Sheppey, in the county of Kent, before the making of the statute of highways, was usually repaired and maintained time out of memory of man at the charges of all the inhabitants and land-occupiers within the whole isle by taxation and sessment at one court or law-day time out of mind yearly holden on the Monday next after the feast of Pentecost at Kingsborough within the said isle, in the name of the Queen's Majesty and her progenitors, only for the maintenance of the same ferry; Be it therefore enacted that the said court shall be duly kept in such manner and form as hath been heretofore accustomed, and that it shall and may be lawful to and for the jury empannelled and sworn at the same court for the time being, by their discretions, reasonably to assess and tax themselves and all other the inhabitants and land-occupiers of the said isle indifferently, according to the rate of land in every man's occupying, towards the maintenance of the same passage or ferry and the ways belonging or leading to the same, so as no acre of

fresh marsh and upland be taxed above the rate of a penny in one year, nor of every ten acres of salt marsh above the rate of a penny in one year." Here we have a money rate which had been levied time out of mind for what were regarded as highway purposes from occupiers of land at so much per acre. Not content with reviving this ancient rate, Parliament proceeded to create a similar one on the opposite side of the Swale. The road from Kingsferry to Middleton had fallen into disrepair, and the parish was not "able" to repair it. Three justices of the peace were therefore authorised "reasonably to assess and tax all and every land-occupiers dwelling out of the said isle and within four miles distant from the said ferry, as to their discretion shall seem convenient, not exceeding the sum of one penny upon every acre of fresh marsh and upland in one year, and upon every ten acres of salt marsh one penny in one year." The wording of this clause was very unfortunate, as we learn from an amending act (27 Eliz., c. 26) passed nine years afterwards, which says, "Forasmuch upon the letter of the same branch some doubt and question hath risen whether the said justices could sess any but such as be land-occupiers and dwelling out of the said isle, and within four miles distant of the said ferry; and that thereby the taxations by them to be made by the letter of the same law will not suffice to repair the said decayed ways, for that the lands and grounds lying out of the said isle and within four miles distant of the said ferry are for the most part occupied by such persons as be inhabiting without the compass of the said four miles; by reason whereof the said highways remain still unrepaired. . . . Be it now

enacted . . . that yearly from henceforth for ever . . . it shall and may be lawful to and for six, five, four, or three justices of the peace . . . to assess and tax upon all and every the lands and grounds lying and being without the said isle, and within four miles distant from the said ferry, such assessments . . . as to them shall seem reasonable, notwithstanding that the owners or occupiers of the same lands or grounds be dwelling without the compass of the said four miles." This little history affords an excellent example of the insuperable difficulty involved in basing local taxation on the dwelling-place of the taxpayer.

In the same year, 1584–5, was passed another act which distinctly names the abilities of the inhabitants as the criterion for the apportionment of a rate. This act, "for the Hue and Cry" (27 Eliz., c. 13), after reciting how individual inhabitants of a hundred had hitherto had no means of reimbursing themselves when their goods had been taken to pay damages to a person robbed on the highway,[1] enacts "that after execution of damages by the party or parties so robbed had, it shall and may be lawful (upon complaint made

[1] "And although the whole hundred where such robberies and felonies are committed, with the liberties within the precinct thereof, are by the said two former statutes charged with the answering to the party robbed his damages; yet nevertheless the recovery and execution by and for the party or parties robbed is had against one or a very few persons of the said inhabitants, and he and they so charged have not heretofore by law had any mean or way to have any contribution of or from the residue of the said hundred . . . to the great impoverishment of them against whom such recovery or execution is had." This must not be taken to prove that rates were never levied to reimburse persons whose goods had been taken in execution, but only that such persons could not compel the inhabitants to levy a rate to reimburse them.

by the party or parties so charged) to and for two justices of the peace . . . of the same county, inhabiting within the said hundred or near unto the same where any such execution shall be had, to assess and tax ratably and proportionably according to their discretions all and every the towns, parishes, villages, and hamlets, as well of the said hundred where any such robbery shall be committed as of the liberties within the said hundred, to and towards an equal contribution to be had and made for the relief of the said inhabitant or inhabitants against whom the party or parties robbed before that time had his or their execution; and that after such taxation made, the constables, constable, head-boroughs or head-borough of every such town, parish, village, and hamlet shall, by virtue of this present act, have full power and authority within their several limits ratably and proportionably to tax and assess according to their abilities every inhabitant and dweller in every such town, parish, village, and hamlet for and towards the payment of such taxation and assessment as shall be so made on every such town, parish, village, and hamlet as aforesaid by the said justices."

This was the last rating act of importance passed before the poor-laws of 1597 and 1601; but as some most vital questions under the statute of 1601 remained unanswered till 1633, and the influence of the poor-rate is not apparent in other rating legislation before the era of the Long Parliament, the few rating acts of James I.'s reign may be regarded as a sort of appendix to the earlier period.

Here we find in 1603–4 an act (1 Jac. I., c. 31) for the relief and ordering of persons affected with the

plague. The mayor, bailiffs, head-officers, and justices of every city, borough, corporate town, or privileged place were given power "to assess all and every inhabitant and all houses of habitation, lands, tenements, and hereditaments" within their jurisdiction at "such reasonable taxes and payments as they shall think fit." In this there seems a slight hesitation between the idea of a rate on persons and one on things. The inclusion of the things as well as the "inhabitants" is probably only due to a desire to make quite sure that non-resident occupiers should not escape.

Next we have several acts of 1605–6, the third year of James I. Chapter 10, for conveying malefactors to jail, authorises "an indifferent tax or assessment" to be made by "the constables and churchwardens and two or three other the honest inhabitants of the parish, township, or tithing" where the malefactor was apprehended.

Chapter 19, for repairing the highway from Nonsuch to Taleworth, after reciting that the parishes through which the road passes are not able to do the work, charges the expense upon the "owners, tenants, farmers, inhabitants, and occupiers of the lands, tenements, and hereditaments" lying in half-a-dozen hundreds. The apportionment was to be made "having good and indifferent respect to the several abilities, nearness, and remoteness" of the persons and property. A special provision secured the chargeability of non-residents.

Chapter 20 is "for clearing the passage by water from London to and beyond the city of Oxford," and is interesting, as it contains a more general assertion of the principle of a betterment charge than any

other act. It says, "For that it is reasonable, just, and equal that those who partake in the benefit of any good work should in fit proportion contribute to the costs and charges thereof: be it further enacted . . . that the . . . commissioners, or the more part of them, shall and may have full power and lawful authority to tax and assess such of the inhabitants of the said several counties"—*i.e.*, Oxford, Berks, Wilts, and Gloucester—"as shall in their opinion be likely to receive ease or benefit by the said passage, and as well those in the said university as in the city of Oxford, at such reasonable sums of money and payments as they in their discretions shall think fit and convenient." Eighteen years afterwards this Act was repealed and its place taken by one (21 Jac. I., c. 32) which puts the burden of improving the passage by water entirely upon the inhabitants of Oxford, on the ground that "the principal benefit thereof will redound immediately to the university and city of Oxford." The commissioners are given full power to tax and assess the inhabitants of the university and city, and also bodies politic and corporate there, as they in their discretions shall think meet. Chapter 22 of the third year of James I. is for paving Drury Lane and the town of St. Giles. It charges both the owners and occupiers of property adjoining the lane, and the inhabitants and occupiers of certain parishes. Chapter 23 authorises rating of the inhabitants of Monmouthshire and Gloucestershire for Chepstow Bridge. Chapter 24 recites that £700 at least had been "levied of the inhabitants of divers parts" of Worcestershire, under the Statute of Bridges, "and employed in the re-edifying of the bridge at Upton-on-Severn, so as the same, with

some small further charge, might have been perfectly finished; notwithstanding all which, by the wilfulness of some particular persons, being unwilling to contribute anything towards so charitable a work, and drawing others daily to like obstinacy, whereby the inhabitants of some parts of the said county would not yield or consent to the making or levying of any taxations or assessments towards the building of the said bridge, the said good and charitable work hath been given over, so as some part of the said bridge, for that it was left unfinished, is again fallen down, and the rest greatly decayed, and like in short time to fall down unless some speedy course be taken for the finishing thereof." The inhabitants of the county, "other than the citizens of the city of Worcester inhabiting in the said city, and that only concerning the lands, goods, and chattels within the said city," are to finish the bridge within three years, on pain of a fine of £100 per annum for every year in default. The justices are empowered to "rate, tax, and assess the said county of Worcester, and the several hundreds, towns, parishes, villages, and hamlets within the same, and every inhabitant or dweller" in them, except the citizens of Worcester as provided above, and to appoint collectors. The justices had evidently been powerless to cope with a refusal on the part of the inhabitants of particular localities to assess and levy the sum rated on their district. The exemption of the citizens of Worcester only in respect of lands and goods in the city, shows the purely technical sense in which the word inhabitant was used; the situation of the property, and not that of the person, is the important thing.

Just as in the earlier or customary rates, so in these statutory rates two principles of assessment are to be seen. The rates for sea defence, the destruction of crows and vermin, the rebuilding of Scarborough Pier, re-edification in the northern counties, the improvement of the Lea and the Thames, are obviously intended to be assessed according to the proportion of benefit resulting from the expenditure to the ratepayers. The rates for building jails, paying members of Parliament, reimbursing persons robbed on the highway, relieving persons suffering from the plague, and conveying malefactors to jail, are equally clearly intended to be assessed according to the ability of the ratepayer. The bridges rate, too, probably belongs to the last class. Between the two classes there are some doubtful cases, such as that of the Nonsuch and Taleworth highway rate, in which the Legislature appears to halt between the two principles. In assessing the benefit rates, the customary method evidently was to assume that all fixed property is raised in value in equal proportion, so that it was just and expedient to levy a pound rate in respect of it upon the owner, or, in the case of recurrent expenditure, upon the occupier. In assessing the other statutory rates, the customary method must have been the same as in assessing the innumerable non-statutory rates. It was assumed that a man's ability to pay towards the local taxation of a particular place was measured by the value of the land or house he occupied. That this assumption, however, was not unquestioned in 1634 may be learnt from "the instructions and directions from the Lords of the Council for the assessing and levying of the ship-money" in that year. These

show us exactly where the king's advisers thought the assessment ought to differ from that of an ordinary rate, if the tax was to be as little unpopular as its unconstitutional character permitted. In the example in Rushworth, the high sheriffs of Middlesex and Hertfordshire, and the head-officers of corporate towns therein, are commanded to provide one ship, the cost of which will be £3300, and it is suggested that Hertfordshire should pay £1500, Westminster £350, and the rest of Middlesex £1450, to make up the amount. The instructions then proceed, "Secondly, when you have settled the general assessments, we think fit that you subdivide the same, and make particular assessments in such sort as other common payments upon the county and corporate towns aforesaid are most usually subdivided and assessed; and, namely, that you, the sheriff, divide the whole charge laid upon the county into hundreds, lathes, and other divisions, and those into parishes and towns; and the towns and parishes must be rated by the houses and lands lying within each parish and town, as is accustomed in other common payments which fall out to be payable by the county, hundreds, lathes, divisions, parishes, and towns. And whereas his Majesty takes notice that in former assessments, notwithstanding the express orders given in our letters to ease the poor that [there ?] have been assessed towards this service, poor cottages [cottagers ?] and others who having nothing to live on but their daily work; which is not only a very charitable [uncharitable ?] act in itself and grievous to such people, but can admit no better instructions [construction ?] than that it was done out of an adverse humour of purpose to raise

clamour and prejudice the service. Wherefore his Majesty's express command is that you take effectual care and order, by such precepts and warrants as you issue for this service, that no persons be assessed unto the same unless they be known to have estates in money or goods, or other means to live by over and above their daily labour; and where you find such persons to be taxed, you are to take off what shall be set upon them, and lay it upon those that are better able to bear it. And that you may the better spare such poor people, it is his Majesty's pleasure that where there shall happen to be any man [men ?] of ability, by reason of gainful trades, great stocks of money, or other usual estates, who perchance have or occupy little or no land, and consequently in an ordinary land-scot would pay nothing or very little, such men be rated and assessed according to their worth and ability; and that the monies which shall be levied upon such may be applied not only to the sparing and freeing of the such poor people as aforesaid, but also to the easing of such as, being either weak of estate, or charged with many children or great debts, or unable to bear such great charge as their lands in their occupation might require, in an usual and ordinary proportion; and the like cause [course?] to be held by the head-officers in the corporate towns, that a poor man be not set in respect of the usual tax of his house or the like at a greater sum than others of much more wealth and ability; and herein you are to have a more than ordinary care and regard, whereby to prevent complaints of inequality in the assessments, whereby we were much troubled the last year.

"Thirdly, to the end that this may be effected with

more equality and expedition, you, the sheriff, are to govern yourself in the assessment for his service by such public payments as are most equal and agreeable to the inhabitants of that county; and for your more ease and better proceeding herein, after you have accordingly rated the several hundreds, lathes, and divisions of that county, you may set forth your warrants to the constables, requiring them to call unto them some of the most discreet and sufficient men of every parish, town, or tithing, and to consider with them how the sum charged upon each hundred may be distributed and divided as aforesaid, and with most equality and indifferency; and to return the same in writing, under their hands, with all possible expedition; which being done, you are to sign the assessment set on the several persons of every particular parish, town, or tithing, if you approve thereof; and if, for inequality, you find cause to alter the same in any part, yet after it is so altered you are to sign the same, and, keeping the true copy thereof, you may thereupon give order for the speedy collection and levying of such sums accordingly by constables of hundreds, petty constables, and others usually applied for collection of other common charges and payments."[1] It is clear from this that in 1634 it was already recognised that the ordinary method of rating was not in accordance with distribution of the burden according to ability.

[1] Rushworth, *Historical Collections*, 1680, vol. ii. pp. 259–61.

III

POOR-LAW RATES TO 1601

WHILE the "ability" rates created by Tudor and Jacobean parliaments, in practice generally followed the model of the earlier or customary rates, and were consequently assessed in accordance with a measurement of ability which was no longer regarded as sound, the poor-rate, owing to its peculiar origin, started afresh direct from the principle of contribution according to ability, and was not at first encumbered with the misleading standard of the older rates.

The first legislative step towards the establishment of a local rate for the relief of the poor was taken when it was enacted that certain persons dependent on charity should be confined to particular places. The act 12 Ric. II., c. 7 (1388) provided that "beggars impotent to serve shall abide in the cities and towns where they be dwelling at the time of the proclamation of this statute; and if the people of cities or other towns will not or may not suffice to find them, that then the said beggars shall draw them to other towns within the hundred, rape, or wapentake, or to the towns where they were born, within forty days after the proclamation made, and shall there continually abide during their lives." A century later, in 1495, the act 11 Hen. VII., c. 2, ordained "that all manner of beggars not able to work, within six weeks

next after proclamation made of this act go rest and abide in his hundred where he last dwelled, or there where he is best known or born, there to remain or abide, without begging out of the said hundred." The act 19 Hen. VII., c. 12 (1503–4) is rather less vague. It ordains "that all manner of beggars not able to work within six weeks next after proclamation made by this act go rest and abide in his city, town, or hundred where they were born, or else to the place where they last made their abode the space of three years, there to remain or abide, without begging out of the said city, town, hundred, or place." It also enacts that valiant vagabonds, after being punished, are to go "into such city, town, place, or hundred where they were born, or else to the place where they last made their abode by the space of three years, and that as hastily as they conveniently may, and there to remain and abide." Lastly, in 1530–1 the act 22 Hen. VIII., c. 12, provided that every impotent beggar should have a license given him by the justices, and should not go outside the limits they assigned to him, and that every able-bodied vagrant should be sent back "to the place where he was born or where he last dwelt . . . by the space of three years, and there put himself to labour like as a true man ought to do."

Provisions like these necessarily led to further provisions for securing that the impotent should be maintained, and the able-bodied set to work, in the places assigned to them; and so in 1535–6 we find Parliament awaking to a recognition of the fact that it was not explained "how and in what wise the said poor people and sturdy vagabonds should be ordered

at their repair and at their coming into their countries, nor how the inhabitants of every hundred should be charged for the relief of the same poor people, nor yet for the setting and keeping in work of the aforesaid valiant vagabonds at their said repair into every hundred of this realm."[1] Difficulties had evidently arisen from the unwillingness of the "countries" or hundreds to extend charity to every impotent beggar with whom the justices saddled them, and to provide work of a kind which would satisfy the valiant vagabond who had been returned, like a bad shilling, to the place of his birth. A certain measure of compulsion was accordingly applied. It was enacted (27 Hen. VIII., c. 25) that "all the governors and ministers of every of the same cities, shires, towns, hundreds, wapentakes, lathes, rapes, ridings, tithings, hamlets, and parishes"—a fine confusion of local government areas—"as well within liberties as without, shall not only succour, find, and keep all and every of the same poor people by way of voluntary and charitable alms, . . . but also . . . cause and compel all and every the said sturdy vagabonds and valiant beggars to be set and kept to continual labour in such wise as by their said labours they and every of them may get their own living with the continual labour of their

[1] Preamble of 27 Hen. VIII., c. 25. It is curious that this act appears to assume, without any apparent justification, that the act of 1530–1 required not only able-bodied beggars and vagabonds, but also impotent poor persons, to be sent back to the place where they were born or last dwelt for three years. See the provision of § 5, that leprous and bedrid persons may remain where they be, and "shall not be compelled to repair into their countries according to the tenor and purport of the aforesaid former act." There seems to have been some confusion between the act of 1530–1 and the earlier acts quoted above.

own hands." Every parish in default—none of the other areas are mentioned here—might be fined £1 a month by quarter-sessions. In order to defray the expense of succouring the impotent persons and keeping the sturdy vagabonds at work, the mayors and head-officers of corporate towns, and the churchwardens or two others of every parish, were to collect alms of the good Christian people within the same with boxes every Sunday, or otherwise, "upon pain that all and every the mayors, governors, aldermen, head-officers, and others the king's officers and ministers of every of the said cities, boroughs, towns corporate, hundreds, parishes, and hamlets, shall lose and forfeit for every month that it is omitted and undone, the sum of 20 shillings." This list of authorities seems to show that the authors of the statute had still somewhat vague notions as to the question by whom it should be put in execution. The officers of each hundred and corporate town were apparently intended to exercise a general supervision, and to distribute the "overplus" of the collections in the wealthy parishes among the poor parishes; but the parish was the primary unit, and the provisions as to accounts all relate to it. The churchwardens, with six or four honest neighbours, could demand accounts quarterly or oftener from the collectors. The parson, or some other honest man, was to keep accounts showing receipts and expenditure, but the book containing them was always to remain in the custody of two or three of the constables and churchwardens, or some other indifferent man, by their consents, and not in that of the parson, vicar, or parish priest. The book was to be bought and paid for by the constables and churchwardens

for the time being at the common collections, which probably means "out of the common collections." Bailiffs, constables, churchwardens, or others the collectors of alms might be paid wages out of the money collected if they forbore their own business and labour. No penalties could be exacted merely because the "voluntary and unconstrained alms and charity of the parishioners or people" who were made "contributory to such alms" turned out to be insufficient for the purposes of the act, and no one was to be "constrained to any such certain contribution but as their free wills and charities shall extend."

Both these acts were repealed by the act of 1547 (1 Ed. VI., c. 3), which attempts to get over the difficulty of dealing with sturdy vagabonds by making them slaves for two years, and in certain cases for life, to any man claiming them. If unclaimed by any private person, they were to be sent to the place of their birth, and there treated as public slaves. The mayors and other head-officers of every city, town, or hundred, were to see all lamed, sore, aged, and impotent persons who were born therein, or had been there most conversant or abiding by the space of three years, and who could not be treated as vagabonds, "bestowed and provided for of the tenantries, cottages, or other convenient houses to be lodged in, at the costs and charges of the said cities, boroughs, and villages, there to be relieved and cured by the devotion of the good people of the said city, borough, town, or village." Impotent poor persons found in cities and corporate towns where they were not born or had not dwelt three years,

were to be sent on horseback or in carts or chariots, from constable to constable, to their place of settlement.[1] The meaning of the act might well have been less obscurely expressed, but it seems plain that the intention is to put the cost of housing the impotent poor upon the public funds of the localities, which would eventually have to replenish their coffers by rates raised in the old way. The cost of maintaining the impotent poor when once housed, on the other hand, is to be defrayed by voluntary gifts. To stimulate the devotion of his flock in this respect, every parson is ordered to exhort his congregation to charity every Sunday, but there is no re-enactment of the elaborate provisions of the act of 1535–6 for enforcing and regulating the weekly collections.

As any one but the legislators of the reign of Edward VI. would have expected, this slavery statute did not long remain in force. It was repealed two years after it was passed (by 3 & 4 Ed. VI., c. 16). Its provisions for the removing, housing, and maintaining the impotent poor, however, were re-enacted, with the exception of the clause ordering the parson to exhort his congregation to charity; and the act of 1530–1 was revived, with an additional provision, which had the effect of throwing the cost of deporting destitute alien immigrants upon the ports. After two years more the provisions with regard to the collection of alms contained in the act of 1535–6 were in substance restored and enlarged in 1551 (by 5 & 6 Ed. VI., c. 2):—

"Yearly one holiday in Whitsun week in every

[1] There is no provision for removing impotent poor persons from country districts to their place of settlement.

city, borough, and town corporate, the mayor, bailiffs, or other head-officers for the time being, and in every other parish of the country, the parson, vicar, or curate, and the churchwardens, having in a register or book as well all the names of the inhabitants and householders, as also the names of all such impotent aged and needy persons as . . . are not able to live of themselves nor with their own labour, shall openly in the church and quietly after divine service call the said householders and inhabitants together, among whom the mayor and two of his brethren in every city, the bailiffs or other head-officers in boroughs and towns corporate, the parson, vicar, or curate, and churchwardens in every other parish, shall elect, nominate, and appoint yearly two able persons or more to be gatherers or collectors of the charitable alms of all the residue of the people for the relief of the poor, which collectors, the Sunday next after their election (or the Sunday following if need require), when the people is at the church and hath heard God's holy word, shall gently ask and demand of every man and woman what they of their charity will be contented to give weekly towards the relief of the poor; and the same to be written in the said register or book."

This public and regular contribution of definite sums promised and recorded beforehand is in itself more like a rate than the collection with boxes authorised by the act of 1535–6. It was, too, of a less voluntary character; a person who refused to subscribe might bring down on his head ecclesiastical punishments (which were more dreaded then than now), for it was enacted that if any one "able to further

this charitable work" obstinately or frowardly refused to assist, he might be sent to the bishop, who would, "according to his discretion, take order for the reformation thereof."

These provisions remained in force till 1555, and then they were simply re-enacted almost in the same words, and stood till 1572. But important additions were made in 1555 and 1562–3. By the act of 1555 (2 & 3 P. & M., c. 5) the rate-in-aid system was introduced, in a semi-voluntary form, in consequence of the same circumstances which long afterwards led to the creation of the unions, and later still to the creation of the metropolitan common poor fund. In cities and corporate towns not conterminous with a single parish, the mayors and other head-officers were to "consider the estate and ability" of every parish, and if they found that the parishioners of any one parish were "of such wealth and havour that they have no poverty amongst them, or be able sufficiently to relieve the poverty of the parish where they inhabit and dwell, and also to help and succour poverty elsewhere further," they might then, "with the assent of two of the most honest and substantial inhabitants of every such wealthy parish," consider the needs of all the inhabitants of the town, "and move, induce, or persuade the parishioners of the wealthy parish charitably to contribute somewhat according to their ability towards the weekly relief" of the poor in the other parishes. By the act of 1562–3 (5 Eliz., c. 3) compulsion by the civil magistrate was introduced. When the bishop found himself unable to overcome the obstinacy or frowardness of a person able but unwilling to contribute, he was authorised to send the

refractory individual to the county justices or town magistrates, and these were empowered to "sess, tax, and limit upon every such obstinate person, according to their good discretions, what sum the said obstinate person shall pay weekly towards the relief of the poor." If he still declined to pay he was to be committed to prison.

In 1572 (by 14 Eliz., c. 5) a clean sweep was made. All these provisions were repealed. In place of them it was enacted that the county justices and town magistrates should divide themselves, and make diligent inquiry within their several divisions as to the aged, decayed, and impotent poor who were born or had for three years resided in these divisions. They were then to "devise and appoint, within every their said several divisions, meet and convenient places by their discretions to settle the same poor people for their habitations and abidings, if the parish within the which they shall be found shall not or will not provide for them." The justices and magistrates shall also, says the act, "number all the said poor people within their said several limits, and thereupon (having regard to the number) set down what portion the weekly charge towards the relief and sustentation of the said poor people will amount to within every of their said several divisions and limits; and that done they . . . shall by their good discretions tax and assess all and every the inhabitants dwelling in all and every city, borough, town, village, hamlet, and place known within the said limits and divisions to such weekly charge as they and every of them shall weekly contribute towards the relief of the said poor people, and the names of all such inhabitants taxed

shall also enter into the said register book, together with their taxation; and also shall by their discretions, within every their said divisions and limits, appoint or see collectors for one whole year to be appointed of the said weekly portion, . . . and also shall appoint the overseers of the said poor people."

The fact that this act does not say that the inhabitants are to be taxed primarily, at all events, for the poor of their own parish, led the commissioners of 1834 to think that it deviated from the practice followed both before and after it, of making the relief of the poor a parochial charge. "As it vested the power of assessment in the justices," they say, "it threw the burden, not on each parish, but upon all the inhabitants of the divisions within the jurisdiction of the assessing justices."[1] This does not seem, however, to have been either the intention or the result of the act. The separate existence of each parish was too well recognised to need express mention. In the earlier acts language is constantly used about the mayors and head-officers of towns which might be taken to imply that parochial chargeability did not exist within towns containing more than one parish; but this would be a totally erroneous conclusion, as we learn from the act of 1555.[2] If it had been intended to destroy parish chargeability in 1572 we may be sure that the intention would have been plainly expressed, whereas there is nothing in the act to prevent the justices from keeping the accounts of each parish separate. That they were intended to do so is suggested by the 27th clause, which expressly authorises the justices in session, in the case of poor

[1] *Report*, 8vo ed., p. 13.

[2] See above, p. 61.

towns and parishes, to allow collections to be made for the poor in other towns or parishes. If divisions had been the unit, this clause could scarcely have failed to make the fact clear, and it certainly does not. That parish chargeability was not destroyed as a matter of fact is shown by the act of 1575–6 (18 Eliz., c. 3), which complains that bastards "are now left to be kept at the charges of the parish where they be born, to the great burden of the same parish, and in defrauding of the relief of the impotent and aged true poor of the same parish," and therefore empowers the justices to take measures not only for the punishment of the parents, but also "for the better relief of every such parish, in part or in all."

It is curious that, though systematic taxation is apparently introduced by the act of 1572, and an appeal to the general sessions of the peace against the amount is provided for, the idea of voluntary alms is not altogether abandoned. Instead of simply saying that if the taxpayer will not pay the amount at which he is assessed, distress will be levied on his goods, it says, "If any person or persons being able to further this charitable work, will obstinately refuse to give towards the help and relief of the said poor people, or do wilfully discourage others from so charitable a deed, the said obstinate person or wilful discourager shall presently be brought before two justices of the peace (whereof one to be of the quorum) of the same county, to shew the cause of his obstinate refusal or wilful discouragement, and to abide such order there as the said justices shall appoint: if he refuse so to do, then to be committed to the next gaol, . . . there to remain until he be contented with their said order,

and do perform the same." Moreover, the existence of a surplus is contemplated. The surplusages of the collections and forfeitures are to be expended in setting to work the rogues and vagabonds. Now with a well-ordered system of taxation there would of course be no surplus.

The act of 1572, like its predecessors, imposes charges for the conveyance of the vagabond and impotent poor upon the parishes or their officers without making any special provision for it, but it also imposes a definite rate for the relief of vagabonds in prison. It says that in most shires the jails are in towns "where there be a great number of poor people, more than they are well able to sustain with their relief, and in some shires the assizes are kept far distant from the place where the common jails are; by reason whereof the said prisoners are like to famish for want of sustenance if they be not therefore provided." It therefore enacts that quarter-sessions shall rate and tax every parish in the shire "at such reasonable sums of money for and towards the relief of the said prisoners as they shall think convenient by their discretions, so that the said taxation and rate doth not exceed above 6d. or 8d. by the week out of every parish; and that the churchwardens of every parish within this realm for the time being shall every Sunday levy the same."

The next act, a portion of which we have already had occasion to quote, is that of 1575–6 (18 Eliz., c. 3), "for the setting of the poor on work and for the avoiding of idleness." The surpluses ot the collections had apparently turned out insufficient to provide for giving work to the unemployed, and so the new act

was passed "to the intent youth may be accustomed and brought up in labour and work, and then not like to grow to be idle rogues; and to the intent also that such as be already grown up in idleness, and so rogues at this present, may not have any just excuse in saying that they cannot get any service or work, and then without any favour or toleration worthy to be executed; and that other poor and needy persons being willing to work may be set on work." It was provided that in every city and corporate town, and in market towns or other convenient places, the magistrates or justices should get together a "competent store and stock of wool, hemp, flax, iron, or other stuff as the country is most meet for," in order that the poor and needy in want of work might be employed. They were to appoint collectors and governors of the poor, who were to deliver to the applicant for relief a competent portion of the stock to be wrought into yarn, and to pay him according to the desert of his work, and then sell the product and buy more stuff, "in such wise as the stock or store shall not be decayed in value." If this scheme had worked as it seems to have been intended to do, it would have been self-supporting after the first outlay. To meet that outlay the justices and magistrates were authorised to "tax, levy, and gather" a stock from themselves and all other inhabitants within their several jurisdictions. The act also empowered the justices of each county in general sessions to tax, levy, and gather from the inhabitants the means necessary for building houses of correction and providing them with stock and implements for setting on work the more refractory rogues and vagabonds. Persons re-

fusing to pay the taxation are not threatened with imprisonment, but with a double rate and distress.

The act of 1592–3 (35 Eliz., c. 4), "for the relief of soldiers," authorises the justices of each county in sessions to charge every parish with a weekly payment not exceeding 6d. nor less than 1d., "which sums so taxed shall be yearly assessed by the agreement of the parishioners within themselves, or in default thereof by the churchwardens and constables of the same parish or the more part of them, or in default of their agreement, by the order of such justices of peace as shall dwell in the same parish, or (if none be there dwelling) in the parts next adjoining."

This series of acts imposes a number of new charges, such as the cost of the conveyance of vagabonds, the relief of prisoners and soldiers, and the building of houses of correction, which were clearly meant to be borne just as other local charges were commonly borne. But all these are kept quite separate from the charge for the relief of the poor. They are looked on as taxes pure and simple from the beginning, while the charge for the relief of the poor is regarded at first as purely voluntary alms, and afterwards as alms which no one is allowed to refuse.

Now the canon of almsgiving, if we may speak of the canon of almsgiving on the analogy of the canons of taxation, is that each man should contribute according to his ability, and there can scarcely be any reasonable doubt that down to the act of 1572 the poor-rate was intended to be assessed upon the inhabitants in proportion to their real ability to contribute, and not according to their ability as measured by the standards in use for the other rates. When

the contribution was voluntary and unconstrained, as prescribed by the act of 1535, it is obvious that public opinion would regard it as fair that every man should contribute according to his real ability. The parson in the exhortation ordered by the act of 1547 would naturally tell his flock to give according to their means. The churchwardens in their gentle demands, and the bishop in taking order for the reformation of obstinacy under the act of 1551–2, must perforce have been guided by the ability of the contributor. In making orders that one parish should contribute towards the relief of another, under the act of 1555, the town magistrates are expressly directed to consider the estate and ability of the parishes. In assessing, taxing, and limiting upon the obstinate person who had refused to obey the bishop, under the act of 1562–3, the justices could adopt no other criterion, and it is entirely contrary to all we know of the ordinary course of English legislation to suppose that when in 1572 the justices were directed "by their good discretions to tax and assess all and every the inhabitants . . . to such weekly charge as they and every of them shall weekly contribute towards the relief of the . . . poor people," they were expected to follow a different principle of assessment from that which they were expected to follow in 1562–3, when they assessed, taxed, and limited upon the obstinate person according to their good discretions what sum he should pay weekly towards the relief of the poor. If the intention of the early poor-rate was understood anywhere, it was probably understood in the city of London, and in 1587 the orders of the Common Council, already quoted, directed that "the lord

mayor and such as be thereunto authorised by the statutes will sit again and peruse the books of taxation for the poor, that by the assessing of such as be come in place since the last assessment and were not assessed before, and by avancing such as God hath further blessed with ability, and with reasonable consideration of such as be less able, the book may be renewed and made as beneficial as reasonably may be for the poor."[1]

In modern phrase, the poor-rate was intended to be a local income-tax upon the inhabitants of the parishes. If every one always lived in the same place, and had all the sources of his income there, the assessors of the poor-rate might perhaps have kept clear of the old inaccurate methods of measuring ability for rating purposes, and the poor-rate would now be a tax upon all kinds of income. But even in the sixteenth century it was common enough for a man to move from one parish to another, and to have sources of income in a parish in which he did not dwell.

Now when we reckon the number of inhabitants in a parish by the methods of our modern censuses, we count only those persons who happen to be present there at a particular moment of time, say midnight on a particular Sunday night. Even this plan cannot be completely carried out, and arbitrary rules have to be made for dealing with persons who at that hour are in the streets or in railway trains. But in ordinary language the word "inhabitant" is much more indefinite. A man cannot be in two places at once, but he can quite easily be an "inhabitant" of two places at once in the ordinary sense of the word. If he has

[1] § 59; see above, p. 20, note.

one house in London and another in Gloucestershire, and lives six months of the year in one and six months in the other, he is clearly an inhabitant both of London and Gloucestershire. If he has a house in Peckham where he spends the night, and an office in the City where he spends the day, he is an inhabitant both of Peckham and the City. Admit this, which is incontestable, and you are soon driven to admit the paradox that a man may inhabit a place which he has never been in. You cannot say that the squire is not an inhabitant merely because you know that he has not visited his country house or the home farm for seven days, 365 days, or ten years. If the house and farm are in the hands of his servants, he is merely absent for the moment, and for all we know he may return to-morrow.

In Jeffrey's case, which was heard in 1589, the judges, as we have seen,[1] took this view of the word "parishioner," which conveys exactly the same idea as "inhabitant" of a parish. They decided that Jeffrey, as an occupier of land there, was a parishioner of Hailsham, and therefore liable to be rated for the church, although he dwelt at Chiddingley. They grounded themselves upon the reflection that if a non-resident occupier was to escape rating for the church, great inconvenience would ensue, since a man who occupied the greater part of one parish might live in another, and so churches in those days would come to ruin. Four years earlier, as we have also seen,[2] Parliament was called upon to remedy great inconveniences which had actually ensued in consequence of the act 18 Eliz., c. 10 having authorised

[1] Above, pp. 25, 26. [2] Above, pp. 44, 45.

a rate upon "land occupiers dwelling within four miles" distance from a particular point; to get rid of the inconveniences, it was enacted that the rate should be upon the lands and grounds within four miles, wherever the occupier might happen to dwell.

It was inevitable that the poor-rate should follow one or other of these precedents. Either the words used by the Legislature would be judicially interpreted so as to cover non-resident persons who had visible sources of income in the parish, or the Legislature itself would make it clear that such persons were to be rated. Just as it was argued that if non-resident occupiers did not pay church-rates, churches in those days would come to ruin, so it would be argued that if non-resident occupiers did not pay poor-rates, the poor in those days would go in danger of starvation.

As it happened, the change was made by Parliament. The act of 1597 (39 Eliz., c. 3), which consolidates and amends the earlier acts, makes occupiers as well as inhabitants liable to rating. It says: "The churchwardens of every parish and four substantial householders there, being subsidy men, or, for want of subsidy men, four other substantial householders of the said parish, who shall be nominated yearly in Easter week, under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the quorum, dwelling in or near the same parish, shall be called overseers of the poor of the same parish; and they or the greater part of them shall take order from time to time, by and with the consent of two or more such justices of peace, for setting to

work of the children of all such whose parents shall not by the said persons be thought able to keep and maintain their children, and also all such persons, married or unmarried, as, having no means to maintain them, use no ordinary and daily trade of life to get their living by, and also to raise, weekly or otherwise (by taxation of every inhabitant and every occupier of lands in the said parish in such competent sum and sums of money as they shall think fit), a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff to set the poor on work, and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them being poor and not able to work, and also for the putting out of such children to be apprentices, to be gathered out of the same parish according to the ability of the same parish."

Ability is again and again mentioned as the standard of contribution. "If the said justices of peace do perceive that the inhabitants of any parish are not able to levy among themselves sufficient money for the purposes aforesaid," they "shall and may tax, rate, and assess as aforesaid any other of other parishes, or out of any parish[1] within the hundred where the said parish is, to pay such sum and sums of money to the churchwardens and overseers of the said poor parish for the said purposes as the said justices shall think

[1] *I.e.*, any inhabitant of another parish or extra-parochial place. A rate in aid might be laid either on a whole parish or on individuals in it. See a ruling of the King's Bench in 1694, and other cases in Bott, *Poor Laws*, 3rd ed., vol. i. pp. 303-8. For an example of a rate in aid on individuals in 1628, see Thos. Gardner, *Historical Account of Dunwich, &c.*, pp. 169, 170.

fit, according to the intent of this law; and if the said hundred shall not be thought to the said justices able and fit to relieve the said several parishes not able to provide for themselves as aforesaid, then the justices of peace at their general quarter-sessions, or the greater number of them, shall rate and assess as aforesaid any other of other parishes or out of any parish within the said county for the purposes aforesaid, as in their discretion shall seem fit." So, too, "the parents or children of every poor, old, blind, lame, and impotent person or other person not able to work, being of sufficient ability, shall at their own charges relieve and maintain every such poor person in that manner and according to that rate as by the justices of peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter-sessions shall be assessed."

Distress might be levied on any one refusing to "contribute as he shall be assessed," and imprisonment was only to be inflicted in default of distress, which shows that the idea of alms was being lost. But even now the poor-rate was kept quite separate from other rates imposed by the same act with much the same purpose. The act provides that for the relief of prisoners in the King's Bench and Marshalsea, and also of the poor in hospitals and almshouses, the justices in session are to rate every parish "to such weekly sum of money as they shall think convenient, so as no parish be rated above the sum of 6d. nor under the sum of a halfpenny weekly to be paid, and so as the total sum of such taxation of the parishes in every county amount not above the rate of 2d. for every parish in the said county," and these

sums were to be yearly assessed by the agreement of the parishioners within themselves, or by the churchwardens and constables, or by the justices, just like the sums raised for the relief of soldiers under 35 Eliz., c. 4.[1] So, too, Chapter 4 of the same session, "for punishment of rogues, vagabonds, and sturdy beggars," which provides for the building of houses of correction, does not place the charge on the poor-rate. It says nothing about the method of raising the necessary funds, but merely enacts that "from time to time it shall and may be lawful for the justices of peace of any county or city in this realm or the dominions of Wales, assembled at any quarter-sessions of the peace within the same county, city, borough, or town corporate, or the more part of them, to set down order to erect, and to cause to be erected, one or more houses of correction within their several counties or cities; for the doing and performing whereof, and for the providing of stocks of money and all other things necessary for the same, and for raising and governing of the same, and for correction and punishment of offenders thither to be committed, such orders as the same justices or the more part of them shall from time to time take, reform, or set down in any their said quarter-sessions in that behalf shall be of force and be duly performed and put in execution."

Manx, Scotch, and Irish vagabonds, rogues, and beggars were to be deported "at the common charge of the country where they were set on land."

The judges appear to have held a conference upon these two statutes shortly after they were passed, and

[1] Above, p. 67.

to have arrived at certain resolutions as to their interpretation, which were widely circulated in manuscript,[1] and were printed by Lambard in the 1599 edition of his *Eirenarcha*. "I trust," he says, "that I may, without offence to any, make public use of those grave resolutions and advices that, being in the hands of sundry men abroad, are commonly ascribed to her Majesty's justices at Westminster, and do tend much to the right execution of this and the other statute (39 Eliz. Reg.) concerning rogues and the poor, which only (of all our laws) have most Christianly and civilly given order in that behalf, and are therefore with so much the more care and diligence to be put in use amongst us, as they will not only deliver us of the present burden, but also destroy the very brood of this unruly people."[2] There were twenty resolutions in all, and the eighteenth and nineteenth were:—

"Parsons or vicars, &c., be bound (as inhabitants) to the relief of the poor, as well as others that inhabit within the parish.

"Every one that hath tithes impropriate, coal-mines, or lands in manual occupation, &c., is chargeable, and so for such as have saleable woods, proportioning the same to an annual benefit."

The act of 1601 for the relief of the poor (43 Eliz., c. 2) is merely a repetition of that of 1597, with a few alterations, of which the most important is the incorporation of these two resolutions of the judges, so that the overseers are directed to raise the money required, not "by taxation of every inhabitant and

[1] See, for an example, Bodleian MSS., Tanner, 91, f. 163.

[2] *Eirenarcha, or of the Office of the Justices of Peace*, Book ii. ch. 7, on unnumbered pages between pp. 206 and 207.

every occupier of lands," but "by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate or propriations of tithes, coal-mines, or saleable underwoods."[1]

The statute of 1597 was only passed after much discussion in Parliament, but it is probable that no one then noticed the hopeless contradiction involved in the coupling together of the inhabitant and the non-resident occupier in a system of taxation according to ability. If a man is to be taxed in one parish —let us say if Jeffrey is to be taxed in Hailsham in respect of the ability which he is presumed to derive from the occupation of 130 acres there, it is evident that he must not be taxed at his residence at Chiddingley in respect of his whole ability or income, but only in respect of what is left of it after deducting the portion in respect of which he has already been taxed in Hailsham. Now in a small place like Chiddingley the overseers will very probably have quite definite opinions as to the relative ability of the inhabitants without making any elaborate computations. They will say at once that Jeffrey ought to pay double what Jones pays, and half what Smith pays, and so on. But as soon as Jeffrey is divided in two, and part of him made taxable in Hailsham, this rough-and-ready method breaks down. He is only to pay at Chiddingley in respect of his whole ability, minus that part of it in respect of which he is taxed in other parishes.

[1] The sixteenth resolution of the judges, "By this word parents is understood a father or a grandfather, mother or grandmother, being persons able," was also incorporated in substance; but the seventeenth, "Within the word children is included any child or grandchild being able," was not.

The Chiddingley overseers cannot get at this amount by the way of subtraction, and are consequently driven to assess him according to the means or sources of ability which he possesses in Chiddingley. There will be a natural tendency to apply the same criterion of ability in the case of inhabitants as in that of non-resident occupiers, so that Jeffrey and all other inhabitants will be assessed simply according to the value of the lands, houses, tithes, coal-mines, or saleable underwoods occupied by them.

To make this transition complete all over the country, however, took almost two centuries and a half, and to trace the successive steps of the process must be our next object.

IV

THE POOR-RATE SINCE 1601

In the 1635 edition of Dalton's *Country Justice*, a work of considerable authority in its day, we find the following commentary on the rating provisions of the act of 1601 :—

"In these taxations there must consideration be had, first to equality, and then to estates.

"Equality, that men be equally rated with their neighbours, and according to an equal proportion.

"Estates, that men be rated according to their estates of goods known, or according to their [the ?] known yearly value of their lands, farms, or occupyings, and not by estimation, supposition, or report. Also herein the charge of family, retinue, and countenance is in some measure to be regarded; for if one valued at £500 in goods hath but himself and his wife, and another estimated at £1000 hath wife and many children, &c., the first man by reason is to be rated as much as the other; and so of lands. *Tamen quære* what the law is in such cases." [1]

This opinion that expenses as well as income should be taken into account, received some support from the Court of King's Bench as late as 1698, when, in the course of hearing a case concerning a rate levied in Norwich Cathedral precinct, the judges

[1] P. 94.

remarked that "the rent is no standing rule, for circumstances may differ, and there ought to be regard *ad statum et facultates*."[1]

The old practice of forming a general estimate of ability probably lingered long in a great many out-of-the-way places; and in one parish at least, quite close to the centre of government, as late as 1823, the poor-rate was not assessed, and never had been assessed, upon all the inhabitants uniformly, according to an equal pound rate, but was made, according to an ancient custom, by the vestry, "without respect to value, but according to the ability of the party charged, such ability being estimated with reference to property, whether in the parish or out of it." In some instances the property was stated, but in a great majority of cases it was not stated, and where it was stated the rate was not in proportion to the rent of the property; for example, L. Turner, for two coopers rented at £40, paid £5 11s.; Alexander Mann, for a house rented at £40, paid £10 15s.; and Mr. Lucas, for a house rented at £50, paid £9 10s. This was in no remote rural neighbourhood, but in the parish of St. Mary, Whitechapel.[2]

How firmly that parish still clung to the old principle is shown by the fact that no less than seventeen years earlier, in 1806, a local act had expressly authorised the vestry to order that the poor-rate and church-rate should be equal pound rates if it thought fit, "the ancient custom" of the parish notwithstanding. The act provided for an equal pound rate for cleansing, lighting, and watching, but did not

[1] Comberbach, *Reports*, p. 478.

[2] Barnewall and Cresswell, *Reports*, vol. ii. p. 313.

interfere with the poor-rate or church-rate, except by giving the vestry this option, of which, in regard to the poor-rate, it had never taken advantage.[1] Cases like this, however, are exceptional, and in general the change from rating according to ability to rating according to property occupied began far earlier.

When a system of taxation according to ability estimated by persons acquainted with the circumstances of the taxpayers has been displaced by a system of taxation according to the annual value of lands and tenements occupied, two changes must have occurred. In the first place, farmers and others who derive business profits from the lands or tenements they occupy have come to be rated by the value of the lands or tenements they occupy, instead of by the profits they actually derive from them; and, secondly, no one is rated in respect of the receipt of rent, salary, or profits derived from the ownership of movable property.

The first of these changes can scarcely be said to have any history. In small rural communities carrying on agriculture by nearly uniform methods, the rental value of the farms affords as good a criterion of the farmers' means as anything that was likely to be found three centuries ago. Even at the present day a farmer's income, for purposes of the income-tax, is assumed to be a fixed proportion of the rent he pays. Similarly, the rental value of shops or factories is not a bad criterion of the means of occupiers engaged in the same trade, and not an extremely bad one of the means of occupiers engaged in different trades. Rental

[1] *Enactments as to London Rating*, 1895 (L.C.C. No. 243), Part i. Rating clauses division, p. 272.

value of the property occupied was thus generally adopted as a basis for estimating the relative ability of the ratepayers, and the convenience of having something arithmetical to go upon outweighed the injustice of not always having regard *ad statum et facultates.*

The omission to consider salaries, fees, and wages was likewise a matter which caused little dispute, and requires little explanation. In most parishes in the seventeenth century there would not be a single person who had sufficient earnings from mere labour to make him be regarded as one who ought to contribute to the support of the poor; and even where there was such a person, he would in all probability occupy a house the annual value of which would make him contributory in about the proper degree. Persons with high salaries were generally engaged in the service of the government, and difficult to deal with as inhabitants of a parish. We can imagine the overseers' difficulty in extracting anything from naval and military officers or his Majesty's judges. Lawyers and many great persons, moreover, had a way of residing in extra-parochial places. So it came about that it never became the general custom to definitely assess people in respect of earnings from labour. Here and there it was done. In Poole, so late as 1792, clerks and masters of ships and others were assessed in respect of their salaries,[1] but the judges always promptly suppressed any such cases that came before them.[2] In fact, they considered it

[1] Durnford and East, *Term Reports*, vol. iv. p. 771.

[2] See the cases in the Digest s.v. "Salaries" in Bott's *Poor Laws*, 3rd ed., by F. Const.

a *reductio ad absurdum* to suggest that, if such and such an argument were good, lawyers might be taxed for their fees.[1]

The practice of omitting rents from consideration was a much more serious matter. Doubts on the subject were felt within thirty years of the death of Queen Elizabeth. In 1633 certain propositions were laid down, which became known as the Judges' Resolutions of 1633, though, according to the editor of the 1742 edition of Dalton's *Justice*, they were really only answers drawn up by Sir Robert Heath, the Chief Justice, to questions put to him by country gentlemen when he was on circuit. Of these, the eighteenth proposition or resolution is an answer to the question, "Whether the tax for the relief of the poor upon the statute of 43 Eliz., c. 2, shall be made by ability or occupation of lands, or both; and whether the visible ability in the parish where he lives, or general ability wheresoever; and whether his rent received within the parish where he lives shall be accounted visible ability, and whether he shall be taxed for them only and for any rent received from other parishioners; and what shall be said visible ability?" The answer is: "The land within each parish is to be taxed to the charges in the first place equally and indifferently, but there may be an addition for the personal visible ability of the parishioners within that parish according to good discretion, wherein if there be any mistaking, the sessions, &c., or the justices must judge between them."[2] This answers only a small portion of the question, and that in somewhat obscure terms; but

[1] See below, p. 95.

[2] Dalton, *Country Justice*, ed. of 1742, pp. 170, 171.

Sir Anthony Earby's case, which was tried at Lincoln the same year, is clear enough, and, like Jeffrey's, is "a good case to many purposes." It settled that inhabitants of a parish could not be assessed in respect of property occupied by them elsewhere, and also that a landlord could not be assessed for his rent. Sir Anthony and other inhabitants of Boston complained of an undue assessment made upon them by the overseers of Boston, contrary to the statute of 43 Eliz., c. 2, and contrary to former directions given by the judges of assize. The offence of the overseers is not stated, but it is obvious that they had taxed Sir Anthony for property not within Boston; for, says the reporter:—

"Hereupon it was held and so delivered for law by Hutton and Croke, justices of assize, that such assessments ought to be made according to the visible estates of the inhabitants there, both real and personal, and that no inhabitant there is to be taxed by them to contribute to the relief of the poor in regard of any estate he hath elsewhere in any other town or place, but only in regard of the visible estate he hath in the town where he doth dwell, and not for any other land which he hath in any other place or town.

"And also by Hutton and Croke, justices of assize: This hath been so resolved by all the judges of England upon a reference made to them, and upon conference by them had together, where they all did resolve that the assessments for relief of the poor ought to be made in such manner as before, according to their visible estates, real and personal, which they had or enjoyed in the town or place where they inhabited, and not having any regard to any

other estate which they had in any other place or town."

"Sir Anthony Earby complained also that, he having divers tenements there which paid rent unto him, they there did charge his tenants by their assessments, and did charge himself also. Upon this, Mr. Leving, being of counsel for the town of Boston, did inform the judges that they did tax Sir Anthony Earby for his estate, he having the rents; and that such an assessment was made in the county of Leicester upon the lessor, and that by the order and direction of the judges of assize upon a complaint made unto them, and that they were not to tax the tenants who paid the rents.

"Hutton and Croke, justices, made answer, that they did not remember any such case; but they said that by the words and meaning of the statute of 43 Eliz., c. 2, they are to assess the occupiers of the land, and not the lessor who received the rents, the occupiers of the land being by law only to pay the assessment, unless it be specially provided for as to this payment between him and his lessor."

This they also declared to have been "thus resolved by all the judges of England."[1]

Mr. Leving seems scarcely to have made the best of his case. He ought to have relied on the word "inhabitant" in the statute rather than on a doubtful Leicestershire precedent. Contrary as it appears to the plain intention of the Parliament of 1601, the decision of the judges met with general acceptance, and was never disturbed either by subsequent judicial deliverances or by legislation. This was probably due in large measure to the natural confusion of mind

[1] Bulstrode, *Reports*, Pt. ii. p. 354.

which constantly leads us to talk and think of things being taxed when in reality persons are taxed in proportions determined by the amount of those things they possess. As soon as the plan of estimating ability by the rental value of the house or farm occupied led to the amount to be paid being expressed in the form of so much for every pound of rent, it was inevitable that people would regard the rate as a tax on the rent, and think it unfair to tax it twice, or, as it would be better to say, to tax both tenant and landlord in respect of it. Jeffrey, as we have seen,[1] thought it would be "against law and reason, and against the common experience of all England," that he should be taxed to the church-rate for land which he had let. Economic ideas are not so clear now that we can fairly expect that ratepayers of the beginning of the seventeenth century would see that there were really two things in respect of which persons might have been rated: (1) the incomes of the landlords, identical with the rents; and (2) the incomes of the tenants, not identical with, but merely assumed to be equal to or in proportion to, the rents.

The history of the omission of profits derived from movables or personal property is much more tedious and obscure than the omission of rents. It extends from 1601 to 1840. To rate people in respect of goods held merely for personal use, such as household furniture, was never usual, though, like almost every conceivable thing in rating, it was occasionally done, as in Poole.[2] Such articles would be regarded

[1] See above, p. 26.

[2] Durnford and East, *Term Reports*, iv. 771 ff.; Rex *v.* S. White and others.

as a source of expense rather than of income, and as therefore making the owner less rather than more able to contribute. The cattle and other stock of the farmer were not taken into account in rating him, simply because his rent was supposed to furnish sufficient evidence of his ability to pay. But there is no reason whatever to suppose that what we call manufacturers and tradesmen were not rated in proportion to their supposed profits so long as the rate was assessed by a vague estimate of ability. As soon, however, as occupiers of lands and houses and tithes are assessed by a pound rate, difficulties arise about these profits. The simplest solution is to trust that the assessment of the houses and other tenements will do justice among the receivers of such profits. There seems little doubt that this was the course generally followed. But it is easy to see that in some parishes where different kinds of trades were carried on, the value of the tenement alone would not be a very satisfactory basis of assessment. It was natural to look for some other concrete thing on which to impose a pound rate, and to find this concrete thing in stock-in-trade, assuming, of course, that £100 worth of stock-in-trade brought in an income of five or some other number of pounds, and treating this £5 for purposes of rating as equal to £5 of rental value. Accordingly it happened that, while in most parishes no notice was taken of anything except lands, houses, tithes, coal-mines, and underwoods, in a few places a system of rating in respect of stock-in-trade existed from the earliest establishment of pound rates down to the present century.

The resolutions of Sir Robert Heath or the judges

in 1633, which have already been quoted,[1] after saying that the land is to be rated in the first place, only say there *may* be an addition for the personal visible ability of the parishioners, which certainly suggests that a parish might please itself about taxing parishioners in respect of their movables. A general highway act of the Commonwealth (*anno* 1654, c. 3) creates a "pound rate upon all the several occupiers of houses, lands, tithes, coal-mines, fellable[2] woods, tenements, or hereditaments within the parish, according to the true yearly value of the same, and also upon the dead goods, commodities, or stock-in-trade of every particular parishioner charged to pay to the poor, rating every £20 value of such goods equal to every 20s. land by the year." The words rather suggest that the system of pound rates was not in general use, and that parishioners were charged to pay to the poor according to a general estimate of ability. This inference is confirmed by the wording of a subsequent clause, which empowers every urban parish to make "by-laws and orders for the rating and taxing the several inhabitants of the said parish being occupiers of any houses, lands, tenements, or hereditaments, or having any stock or (*sic*) trade, or otherwise being of sufficient ability," for reforming the defects in paving and cleansing the streets. In 1662 another general highway act (14 Car. II., c. 6) authorised the surveyors to lay assessments "upon every inhabitant rated to the poor, and upon every occupier of lands, houses, tithes, impropriate or appropriate por-

[1] See above, p. 82.

[2] It is tempting to conjecture that "fellable" is a misreading for "faleable."

tions of tithes, coal-mines and other mines, saleable underwoods, stock, goods, or other personal estate not being household stuff;" and "an additional act for the better repairing of highways and bridges" passed in 1670 (22 Car. II., c. 12) speaks of assessments upon "all and every the inhabitants, owners, and occupiers of houses, lands, tenements, and hereditaments, or any personal estate usually ratable to the poor." The same words are used in the act of 1690 for paving and cleansing London (2 W. & M., sess. 2, c. 8), which assumes the return on the personal estate to be 10 per cent., and in the highways act of 1691 (3 W. & M., c. 12). In his posthumous *Discourse*, Lord Chief Justice Hale, who died in 1676, gives as one of the reasons why no sufficient provision is made for the poor—"Because those places where there are most poor consist for the most part of tradesmen, whose estates lie principally in their stocks, which they will not endure to be searched into to make them contributory to raise any considerable stock for the poor, nor indeed so much as to the ordinary contributions. But they lay all the rates to the poor upon the rents of lands and houses, which alone, without the help of the stocks, are not able to raise a stock for the poor, although it is very plain that stocks are as well by law ratable as lands, both to the relief and raising a stock for the poor."[1] The local acts at the end of the seventeenth and beginning of the eighteenth century show the drift of local and parliamentary opinion to be in favour of greater taxation of personal property. Thus the act for erecting hospitals and workhouses in Bristol passed in 1695–6 provides for the "taxation

[1] *A Discourse touching Provision for the Poor*, 1683, p. 7.

of every inhabitant, and of all lands, houses, tithes impropriate, appropriations of tithes, and all stocks and estates, . . . in equal proportion according to their respective worth and values."[1] In 1703 the act 2 & 3 Ann., c. 8, authorised the guardians of the poor in Worcester to assess sums of money upon "the respective inhabitants or occupiers of lands, houses, tenements, tithes impropriate, appropriations of tithes, and on all persons having and using stocks and personal estates in the said city, . . . in equal proportion according to their several and respective values." This doubtless incorporated Worcester opinion as to what ought to be taxed, and also was not found repugnant to ordinary principles by the Parliament which passed it. In 1711 we have another act (10 Ann., c. 15) in which a most strenuous effort is made to subject every kind of property to rating. It is for the establishment of a workhouse for the Norwich parishes, and empowers the churchwardens and overseers to lay a rate "on the respective inhabitants, and on every parson and vicar, and on all and every the occupiers of lands, houses, tenements, tithes impropriate, and appropriations of tithes, and on all persons having and using stocks and personal estates in the said respective parishes, . . . or having money out at interest, in equal proportion as near as may be according to their several and respective values and estates."

There does not appear to have been much litigation on the subject at this time. Disputes were carried as far as the sessions, but not further. In 1698 several

[1] 7 & 8 W. III., private acts cxxxii.; not printed in its place in *Statutes of the Realm*, but recited in 13 Ann., c. 32.

inhabitants of St. Leonard's, Shoreditch, appealed to the sessions against a rate in which personal estates were not assessed. The magistrates quashed the rate, and ordered the overseers to make another. This they did, but they taxed real estate ten times more in proportion than personal, and the magistrates quashed this rate also. Their right to set aside a whole rate was questioned before the King's Bench, but the court did not enter on the merits of the question.[1] Eight years later, in 1706, the question was put to Chief Justice Holt whether a farmer was chargeable in respect of his stock as well as a tradesman in respect of his stock-in-trade. Holt answered the question in the affirmative, but three of his brethren disagreed with him, and decided that a farmer was not liable and that a tradesman was. The farmer in question seems to have been rated in respect of certain stock which he possessed over and above his ordinary necessary stock for carrying on his business as a farmer. It was noted in this case that farmers had never been so taxed before, nor tradesmen till within recent years, and it was said to be usual to tax clothiers, &c.[2]

In the next fifty years nothing very definite seems to have been decided on the subject by the courts, and the usage of not taxing men in respect of movables, or of taxing them at an absurdly low rate, became so confirmed in many parishes that the judges hesitated to upset it by a clear declaration of the law. A great many cases came before them, but they were always decided on rather technical grounds, which left matters

[1] Salkeld, *Reports*, vol. ii. p. 483.

[2] Lord Raymond, *Reports*, p. 1280; Viner, *Abridgment*, s.v. "Poor," p. 426.

much as they were. In 1769 a motion was made for a mandamus to compel the justices of Canterbury to rate persons who had stock-in-trade and carried on considerable business there. It was refused. Mr. Justice Yates said that the general question aimed at in the argument did not seem to have been decisively determined. Mr. Justice Aston thought there was great difficulty and guesswork in taxing personal property and stock-in-trade, and that it was scarcely possible to ascertain the true quantum of either. No case decided that it was ratable, and probably the 43 Eliz., c. 2, did not intend that it should be. He declared, however, that he gave no direct opinion on this point. "Mr. Justice Willes also declared that he should give no *obiter* opinion about personal property or stock-in-trade being liable to be rated. Yet he intimated that long contrary usage ought to go a great way towards overturning any old dictum, and that, if they were liable, they ought at least to be visible, liquidated, and ascertained, not loose, fluctuating, and uncertain."[1] Lord Mansfield was absent on this occasion. He seems to have had a strong bias against the assessment of personal property, and several of the subsequent cases seem to be rather affected by this. In 1770 a rate came up from Witney in which manufacturers of blankets and other traders were not assessed for their stock-in-trade. The sessions quashed the rate, subject to the opinion of the Court of King's Bench on the following facts. "It appeared, and was admitted, that there have long been many such manufacturers and traders within the said parish who have been constantly assessed to the land-

[1] Burrow, *Reports*, vol. iv. p. 2290 ff.

tax for their respective stocks-in-trade, but none of whom have been ever charged with the payment of any rate for the relief of the poor on account of such stock; that as well the said manufacturers and traders as all other occupiers of lands and houses within the said parish have been and are constantly assessed in this and all former rates for the relief of the poor, as well as to the land-tax, for the lands and houses in their respective occupations; and"—here the cat is out of the bag—"that the churchwardens, &c., of the said parish have been generally, though not always, traders." Lord Mansfield objected to the generality of the question. "The matter," he said, "does not come before the court in a proper manner. It ought to come on by a complaint of some one who is rated for somewhat which he thinks not ratable. The court will not give an opinion on every general question which the sessions may think fit to bring before it. If this court should determine so vague and general a question as whether stock-in-trade be ratable without any distinctions or enumeration of particulars, it would sow the seeds of dissension all over the kingdom." The other judges agreed, and quashed the order of the sessions, on the ground that the rate, if wrong, ought to have been amended, not set aside.[1]

In 1775 a very similar case occurred in Ringwood, the sessions having quashed a rate because certain brewers inhabiting the parish were omitted from the rate in respect of their stock-in-trade, valued at £4000. Here all the old precedents were brought forward and considered, and the only result was that the judges were less favourable than before to taxa-

[1] Bott, *Poor Laws*, 3rd ed., vol. i. pp. 114–15, 232–3.

tion in respect of movable or personal property. Lord Mansfield said: "In general I believe neither here nor in any other part of the kingdom is personal property taxed to the poor. . . . I think the justices would not have done very wrong if they had acquiesced in the practice which has obtained ever since the stat. 43 Eliz., of not rating this species of property. . . . The justices at sessions should have *amended* the rate if they thought this property ratable; and then on attempting to do it they would have discovered the wisdom of conforming to the practice which they expressly state in the case, of not rating it. If they had tried to have amended it, how would they have rated this stock? Are the hops and the malt and the boiler to be rated at so much for each? Or is the trader to be rated for the gross sum which his whole stock would sell for? If the justices had considered, they would have found out the sense of not rating it at all, especially when it appears that mankind has, as it were, with one universal consent refrained from rating it; the difficulties attending it are too great, and so the justices would have found them. As to the authorities which have been cited, they are very loose indeed; and even if they were less so, one would not pay them very much deference, especially as they differ; and the rules they lay down have not been carried into execution for upwards of a hundred years. They talk of *visible* property. What is visible property? I confess I do not know what is meant by visible property. If every visible thing should be determined to come under that description, in that case a lease for years, a watch in a man's pocket, would be ratable. Visible property is something local

in the place where a man inhabits. But that does not decide what a man's personal property is. Consider how many tradesmen depend upon *ostensible* property only." The decision of the judges in 1706, that a tradesman was liable for his stock, was, Lord Mansfield added, extra-judicial. "But supposing it were not, what do they mean by the visible stock of an artificer? Some artificers have a considerable stock-in-trade; some have only a little; others none at all. Shall the tools of a carpenter be called his stock-in-trade, and as such be rated? A tailor has no stock-in-trade; a butcher has none; a shoemaker has a great deal. Shall the tailor, whose profit is considerably greater than that of the shoemaker, be untaxed, and the shoemaker taxed?" Mr. Justice Aston said: "There has been no decision that personal property is ratable. All the opinions upon the subject are only dicta of judges." Mr. Justice Willes and Mr. Justice Ashurst agreeing, the order of sessions was quashed on the same ground as in the Witney case, namely, that the rate should have been amended.[1] After two such plain decisions as these as to the proper course to be pursued by the sessions in dealing with a rate which omitted stock-in-trade, it was natural that the sessions somewhere would follow the course indicated, and amend a rate by inserting in it owners of such property. Accordingly a rate made in Andover in 1776 was amended by the insertion of amounts to be paid by various shopkeepers and others in respect of their profits, which were assumed to be 5 per cent. on the value of their stock. But whatever they did, the sessions were unable to please Lord Mansfield and his colleagues.

[1] Cowper, *Reports*, p. 326 ff.

The order was quashed because it did not appear that the persons whose names were added had notice. Before this conclusion was arrived at, Mr. Burrough had gone through all the authorities in an exhaustive manner, and shown conclusively that the old standard of contribution was ability, from whatever source arising; and this seems to have slightly shaken Lord Mansfield's opinion as to rating in respect of stock-in-trade. He said: "It is a very different question, whether personal estate is to be rated to the extent in which it has been argued to-day, or not to be rated at all in any shape or under any circumstances. It would make the poor-laws very oppressive if a man is to be taxed to the extent of his whole personal estate and income. In that case every man who has money in the funds would be liable; lawyers for their fees, soldiers for their pay, &c. But where men are occupiers of houses and have stock-in-trade, whether such stock-in-trade may be taken into consideration is a very different question. Some personal estate may be ratable; but it must be local visible property within the parish. The general question is too extravagant. It would be material to state what has been the custom of rating. If the usage should be to take in stock-in-trade, there would be very good right to support it." Mr. Justice Aston did not think usage of so much importance. He said that "notwithstanding the usage, if upon the general question, which is what they are now aiming at, it should turn out to be the law that personal property is ratable, if that is the law, it must be rated then, though it never was so before." Mr. Burrough had said that personal property had been rated for a long time both in Andover and in many other parts

of the kingdom, as at Alton, King's Lynn, many parishes in the city of London, Bradford-on-Avon, Trowbridge, Warminster, Frome, and other towns in Wiltshire, and, he was told, probably incorrectly, in many of the large towns of the North.[1]

A few months after this the court was fairly run to earth by a carefully raised case from Bradford-on-Avon. One Francis Hill was charged the important sum of "a penny, as his share or contribution towards the relief of the poor" of the parish for a year in respect of his stock in the clothing trade, and this was proved and admitted to be no more than his just proportion if he was legally bound to contribute anything in respect of his stock-in-trade. He appealed to the sessions, which confirmed the rate, and then to the King's Bench. Lord Mansfield asked what the usage had been in the parish. Counsel replied that both sides had agreed to waive the question of usage. Lord Mansfield then said they had no right to do that, and, with the concurrence of Mr. Justice Aston, referred the case back to the sessions for a statement on the point.[2] It came back in January 1778, with a statement that it had been usual in Bradford to rate persons there for their stock-in-trade, and thereupon the court confirmed the order of sessions, and the rate stood good.[3] Though this case in reality only established that stock-in-trade was ratable in those places where it was the usage to rate it, the next generation of judges seem to have regarded it as establishing the ratability of stock-in-trade everywhere. When the case of Poole came up in 1792, they decided that

[1] Cowper, *Reports*, p. 550. [2] *Ibid.*, p. 613 ff.
[3] *Ibid.*, p. 619.

salaries, money in coin and on real securities, and household furniture were not ratable, but that ships and stock-in-trade were ratable, without troubling themselves about the usage, which was to rate all these things.[1] In a case from Dursley, in Gloucestershire, in 1794, the Chief Justice, Lord Kenyon, incidentally remarked that there was no doubt that personal property was liable, although in the case before him it had never been rated except for six years, between 1769 and 1775, as was shown by the parish books, which went back to 1566.[2] Finally, in 1795, the King's Bench confirmed an order of sessions which quashed a rate in Darlington because certain inhabitants were not rated for their stock-in-trade, although the practice of rating it had only been shown to have prevailed from 1746 to 1752 and from 1788 to 1794.[3]

From this time there could be no doubt that the law required stock-in-trade to be rated, but it does not appear to have been rated any more than before. The Report of the Poor-Laws Commissioners of 1834 contains a page of condemnation of the uncertainty and capriciousness of the existing mode of rating, in which there is not a word which shows that they had ever heard of such a thing as rating stock-in-trade.[4] In 1836 Mr. Poulet Scrope's Parochial Assessments Act prescribed elaborate forms for the assessment of lands and tenements, and preserved absolute silence as to stock-in-trade. No one in either House of Parliament called attention to the omission.[5]

[1] Durnford and East, *Term Reports*, iv. p. 771 ff.
[2] *Ibid.*, vi. pp. 53 ff.
[3] *Ibid.*, vi. p. 468.
[4] P. 359 in the 8vo ed.
[5] See *Hansard*, 1836, *passim*, especially vol. xxxv. p. 371 ff.

At last, however, the new Poor-Law Commissioners brought the matter to a head. Receiving inquiries about it from the country, they issued a minute in September 1838, which is decidedly unfavourable to the rating of stock-in-trade. They say they hesitate to express an opinion favourable to the adoption, or even the continuance, of the custom, and they point out both that "the practice has, with very few exceptions, hitherto prevailed only in the old manufacturing districts of the south and west of England," and that the Parochial Assessments Act appears to contemplate the assessment only of hereditaments, and therefore in some measure discountenances the opinion that stock-in-trade is liable.[1] Six months after the issue of this minute, the Court of Queen's Bench decided, what any one might have expected, that the silence of the Parochial Assessments Act did not amount to a repeal of the law that stock-in-trade should be rated.

Consequently, early in 1840, the Poor-Law Commissioners were driven to recant their previous opinion. They issued a circular letter to churchwardens and overseers which says: "Since the recent decision in the Court of Queen's Bench in the case of Regina *v.* Lumsdaine, in last Easter term, it can no longer be doubted that inhabitants of parishes remain liable to the poor-rate in respect of stock-in-trade, in like manner as they were before the passing of the act to regulate parochial assessments, and that every rate may be successfully appealed against if any inhabitant having productive stock-in-trade be omitted there-

[1] House of Commons Paper, 1840, No. 215; in vol. xxix. pp. 576–7.

from." In order to guide the overseers in carrying out the law, it proceeds to point out that—(1) non-residents cannot be rated in respect of stock-in-trade in the parish; (2) the stock must be local, visible, and productive; (3) it must consist only of the surplus left after deducting debts; (4) it must be rated according to the profit produced; and (5) its nature must be specified distinctly.[1]

At this action of an unpopular government department, Parliament, which had for more than sixty years treated the decisions of the law courts with indifference, was seized with alarm. Sir Robert Peel in the Commons, and Lord Portman in the Lords, demanded a statement of the Government's intentions, and the Government promised a bill for exempting stock-in-trade.[2] This was soon introduced, and passed first and second readings without discussion.[3] On its going into committee, Mr. Goulburn uttered a feeble and somewhat obscure protest in the interest of tithe-owners. The Attorney-General asked if he really thought "that it would be better to let the law remain as it was. If the right honourable gentleman thought so, he was the only man in the House or in the country who held that opinion. . . . It had been found utterly impossible that a rate on stock-in-trade could be so modelled as to be free from legal objections. . . . In fact, the law had become quite odious, and except in a very few instances, no attempt had been made to enforce it. Then the bill made that law which was at present usage."[4] It passed its third

[1] House of Commons Paper, 1840, No. 215; in vol. xxix. pp. 575–6.
[2] *Hansard*, liii. 1367, liv. 499.
[3] *Ibid.*, 1261 and 1381.
[4] *Ibid.*, lv. p. 933.

reading in the Commons, and its first and second readings in the Lords, without debate,[1] and was then dropped, because it was discovered that the last clause might be interpreted so as to create other exemptions besides what was intended. In place of it Bill No. 2, "to exempt stock-in-trade from being rated for the relief of the poor," was promptly introduced in the Commons. This provides that "it shall not be lawful for the overseers of any parish, township, or village to tax any inhabitant thereof, as such inhabitant, in respect of his ability derived from the profits of stock-in-trade or any other property, for or towards the relief of the poor; provided always that nothing in this act contained shall in any wise affect the liability of any parson or vicar, or of any occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods, to be taxed under the provisions" of the acts mentioned in the preamble (43 Eliz., c. 2, and 13 & 14 Car. II., c. 2), "for and towards the relief of the poor." This bill passed all its stages in the House of Commons on August 5, 1840, and passed through the Lords without discussion.[2] It was a temporary measure, and has been renewed from year to year ever since. It practically amounts to a repeal of the statute of Elizabeth so far as the word "inhabitant" is concerned, and thus at last, after 243 years of struggle between two contradictory ideas, the desire of the Elizabethan Parliament of 1597 to include the non-resident occupier led to the disappearance of the inhabitant as such from the list of ratepayers.

[1] *Hansard*, lv. pp. 1023, 1067, and 1163.
[2] *Ibid.*, pp. 1279–81, 1344, 1395, and 1398. It is 3 & 4 Vict., c. 89.

The express inclusion of a particular kind of mines, viz., coal-mines, and of a particular kind of woods, viz., saleable underwoods, was always held to exclude other mines and woods from rating, although otherwise the word lands would have been large enough to cover them. It has sometimes been supposed that Elizabeth's Parliament really meant to exclude these things, but it is much more probable that coal-mines and saleable underwoods were inserted in the act merely because the judges' resolutions of 1597 or 1598 mention "coal-mines and saleable woods, proportioning the same to an annual benefit"; and it is, of course, impossible that the judges could have mentioned coal-mines with a view of excluding other mines, while "saleable woods proportioned to an annual benefit" might easily be interpreted to mean saleable underwoods as opposed to forest not looked upon as a continuous source of profit. It took the Legislature 273 years to nerve itself to the task of getting rid of the illogical exemption. This was done, though not quite thoroughly, by the Rating Act, 1874 (37 & 38 Vict., c. 54), which makes all woods and mines ratable.

And so at last the poor-rate came to apply to all immovable and to no movable property.

V

ASSIMILATION OF OTHER RATES TO THE POOR-RATE

HAVING traced the development of the poor-rate down to the present time, we must now go back to the seventeenth century, and endeavour to follow the steps by which the practice of local authorities, the decisions of courts of law, and the enactments of Parliament have caused the whole of local rates, with trifling exceptions, to be little but additions to the poor-rate.

The old rates levied by common assent of the ratepayers, or by the authority of the governing body of a corporation without statutory sanction, gradually died out or were replaced by modern statutory creations. The relics of them which still existed in the towns just before the Municipal Corporations Reform Act of 1835 will be found described in the Appendix to the report of the Municipal Corporations Commission. There was, for example, at Folkestone a "chamberlain's rate" on property and an "ability tax" of 1s. 6d. per head on persons, which certainly suggests that the Folkestone measurement of ability was decidedly rough.[1] At Pevensey, we are told, "a rate called the town scot is almost every year imposed by the magistrates upon the property within the liberty occupied by persons residing within

[1] House of Commons Papers, 1835, No. 116 (in vol. xxiv.), p. 983.

the liberty. Property owned by non-residents is not rated. The scot is sometimes 1d. in the pound, sometimes 2d. on the poor-rate assessment."[1] Probably there is not now any town or other locality which even claims the power to levy a non-statutory rate, unless the rate of the nature of a county rate, which the City of London believes it could raise, belongs to this class.[2] In any case, we may be sure that if the City were reduced to levying such a rate, it would levy it like a modern statutory rate, and not according to ancient custom.

One alone of the old rates can be said to have died hard—the church-rate; and before it ceased, except in name, to be a rate at all, the differences which existed between its assessment and that of the poor-rate had become very small. After the decision in Jeffrey's case the judges seem sometimes to have held that non-resident occupiers were not liable to pay a rate for what were called the "ornaments" of the church, such as bells, seats, bread and wine, clerk's wages, visitation charges, and the like, on the ground that the personal estates of the inhabitants were chargeable with expenses not relating to the fabric of the church or the fences of the churchyard. Some parishes certainly followed this rule, or something like it; for example, Leverton, near Boston, which levied a church-rate of 1d. per acre in 1611, is reported to have levied a poll-tax of 1d. per head for bread and wine in 1615.[3] But in the first of these years,

[1] House of Commons Papers, 1835, No. 116 (in vol. xxiv.), p. 1019.

[2] *Royal Commission on the Amalgamation of the City and County of London*, 1894, Minutes of Evidence, Questions 7048–52.

[3] P. Thompson, *Antiquities of Boston*, 1856, p. 570.

when Mr. Justice Yelverton remarked that a man was chargeable for reparations by reason of his land, and for ornaments by reason of his coming to church, Chief Justice Fleming and Mr. Justice Williams said, "If the party have land there, he is chargeable for both, whether he come to church or not, for that he may come to church if he please."[1] The distinction was soon almost entirely forgotten.

The Long Parliament, which was often far in advance of its time, passed an ordinance in 1647 practically consolidating the church-rate with the poor-rate. It provides that the churchwardens, or the collectors of monies for church duties, where any such have been formerly used to be chosen, together with the overseers of the poor, shall, after public notice has been given in the church, "from time to time make rates or assessments by taxation of every inhabitant dwelling or residing" within the parish, "and of every occupier of lands, houses, tithes impropriate or impropriations of tithes, coal-mines, or saleable underwoods, or other hereditaments within the said parish or chapelry, in such competent sums of money as they shall think fit, for and towards the reparation and maintenance of every such parish church or chapel respectively, and providing of books, . . . bread and wine, . . . repairing the walls and enclosures of the churchyards."[2] But the action of the Long Parliament in

[1] Bulstrode, *Reports*, Pt. i. p. 20. Brownlowe (*Reports*, Pt. ii. p. 10) gives a different account. In the case of Woodward *v.* Makepeace in 1688 the court held that a non-resident occupier was chargeable for bells, because bells are not ornaments, being as necessary as the steeple (Salkeld, *Reports*, vol. i. p. 164). See Degge, *Parson's Counsellor*, Pt. i. ch. 12 (later editions).

[2] In Scobell, *Acts and Ordinances*, Pt. i. p. 140.

this matter was not ratified by statute after the Restoration, and the civilians seem to have retained rather antiquated ideas as to the liability to church-rates, if we are to judge by a series of propositions given in a bookseller's appendix to the second edition of Godolphin's *Repertorium Canonicum* in 1680, and attributed to the joint wisdom of thirteen doctors of civil law sitting at Doctors' Commons to consider a question as to the church-rate of Wrotham, in Kent. According to these propositions, every inhabitant dwelling within the parish is to be charged according to his ability, and his ability may be estimated either by his goods or by the value of the holding he occupies. No exemption is accorded to resident landlords: "Every owner of lands, tenements, copyholds, and other hereditaments inhabiting within the parish is to be taxed according to his wealth in regard of a parishioner, although he occupy none of them himself, and his farmer or farmers also are to be taxed for occupying only." However, Prideaux, Dean of Norwich, at the beginning of the eighteenth century, after quoting these propositions and Lyndwood,[1] says, "But the general usage now is to make a rate according to the value of the lands." It is, he then adds, a personal, not a real charge—not on the lands, but on persons in respect of the lands, "and for this reason the farmer or occupier, not the landlord, is to pay the same."[2] We may take his evidence as to the usage without accepting as sufficient his explanation of its origin. It is difficult to suppose, however, that

[1] See above, p. 15.

[2] *Directions to Churchwardens for the Faithful Discharge of their Office*, 3rd ed., 1713, p. 51.

resident landlords escaped rating in respect of their rents in those parishes where, in spite of the general usage, the church-rates were assessed according to real estimates of ability. In the case of Miller *v.* Bloomfield, tried in 1823, counsel quoted from the registry of the Court of Delegates a number of places where all sources of ability were taken into account about the time of the Revolution. In Boston in 1706 it was alleged that most of the inhabitants were "tradesmen that live by their trades, and are chiefly assessed to the church assessments according to their way of trading; whereas were they to be assessed according to the rents they sit on or by any other way than by will and doom, which is the constant way of making and levying such assessments in the said parish, their contributions thereto would not advance so much money as they do, and that, moreover, the greatest burden of such assessments would then fall upon such as are not well able to bear the same." Assessing by will and doom was explained as "having due regard to every one's estate, quality, ability, way and circumstances of living."[1] But these exceptional cases are exactly analogous to the exceptional cases in which the poor-rate was assessed in the same way. In some cases (though probably not in that of Boston, considering that Sir A. Earby's case was decided there) they are coincident. For example, it seems that at the beginning of the present century both church-rate and poor-rate were assessed according to a general estimate of ability in Whitechapel; though before 1823 the church-rate became an ordinary pound rate on property under

[1] Addams, *Ecclesiastical Reports*, vol. i. p. 527 ff.

the powers given in the act of 1806.[1] Poole, which, as we have seen,[2] taxed rather freely for the poor-rate, was equally erratic with regard to the church-rate. From 1751 to 1773 it rated stock-in-trade and ships, but not money or securities. From 1773 to 1792 it rated stock-in-trade and ships, and money and securities. Then came the decision of the judges that the poor-rate on money, securities, furniture, and salaries was bad, and it is doubtless owing to that decision that from 1792 to 1800 stock-in-trade and ships, but not money nor securities, were rated to the church-rate. After 1800 ships were omitted, but in a case brought before it in 1823 the Court of Delegates decided that this was wrong.[3]

During the eighteenth century and at the beginning of the nineteenth it was by no means uncommon for the legislature to charge a portion of a rate for building or rebuilding a church upon the landlords, whether resident or not. In the case of St. Leonard's, Shoreditch, in 1735,[4] St. Olave's in 1737,[5] St. Botolph's in 1740,[6] St. Matthew's, Bethnal Green, in 1742,[7] and St. Mary's, Islington, in 1750,[8] the local act charges two-thirds of the rate upon the owners. After this the proportion falls to a half in the case of St. John's, Wapping, in 1755,[9] Lewisham parish church in 1774,[10]

[1] Compare § 54 of the local act 46 Geo. III., c. 89 (in the L.C.C. *Enactments relating to London*, Pt. i., Rating clauses, p. 272) with the extracts from the rate-books in Barnewall and Cresswell, *Reports*, vol. ii. p. 315; and see above, pp. 79, 80.

[2] See above, pp. 81, 96, 97.

[3] Addams, *Ecclesiastical Reports*, vol. ii. p. 30 ff.

[4] L.C.C., *Enactments relating to London*, Pt. i., Rating clauses, p. 42.

[5] *Ibid.*, p. 202. [6] *Ibid.*, p. 277. [7] *Ibid.*, p. 3.

[8] *Ibid.*, p. 298. [9] *Ibid.* p. 226. [10] *Ibid.*, p. 186.

St. John's, Hackney, in 1790,[1] and Shadwell parish church in 1817.[2] In several other local acts for building or rebuilding London churches, however, from 1774 onwards, there is no provision for a contribution from the owners of property.[3]

In 1837 the parishioners of Braintree refused to make a church-rate when it was obviously required. The churchwardens thereupon attempted to raise one on their own authority, without the common assent of the inhabitants. The ecclesiastical court upheld their action, but the Queen's Bench and Exchequer Chamber both decided against it. The latter court, however, suggested that a rate laid by the churchwardens and a minority of the parishioners might hold good.[4] The suggestion was acted upon, but eventually a rate laid in the manner proposed was defeated on appeal to the House of Lords.[5] The church-rate continued to struggle on for some time in spite of this decision, which placed beyond doubt the fact that the Nonconformist opposition to such taxation could prevent a rate being laid wherever it could secure a majority of votes; but in 1868 all legal remedy against persons refusing to pay church-rates was abolished by statute,[6] so that the church-rate now lacks one of the essential features of all taxation—a compulsory character.

A tendency towards the consolidation of the minor

[1] L.C.C., *Enactments relating to London*, Pt. i., Rating clauses, p. 159.

[2] *Ibid.*, p. 224. [3] *Ibid.*, pp. 244, 36, 176, 239, 220.

[4] Phillimore, *Burn's Ecclesiastical Law*, ed. of 1842, vol. i. p. 388*h* ff.

[5] W. W. Attree, *The Braintree Church-Rate Case* (House of Lords), 1853.

[6] 31 & 32 Vict., c. 109.

Tudor statutory rates with each other and the poor-rate seems to have made itself felt very early. The country gentlemen who interrogated the Chief Justice in 1633 asked "whether the tax for the county stock, jail, and house of correction, is to be made by the statute of 14 Eliz., 5, 43 Eliz., 2, by ability, and upon the inhabitants of the parish only, or upon them or [and ?] the occupiers of lands dwelling in that parish, or whether such as occupy lands in that parish and dwell in another parish shall be taxed?"[1] If they are well reported, their style is far from lucid; but it is plain that, besides wanting to know whether the non-resident occupier was to be rated, they wished to know whether the same standard—that of ability—was to be adopted in assessing these miscellaneous rates as in assessing the poor-rate. The answer of the Chief Justice was: "If the statute in particular cases give no special direction, it is good discretion to go according to the rate of taxation for the poor; but when the statutes themselves give direction, follow that." The rates mentioned by the country gentlemen, together with the other county rates then in existence,[2] were consolidated and, so far as assessment

[1] Dalton, *Country Justice*, ed. of 1742, p. 173.

[2] For bridges, under 22 Hen. VIII., c. 5, and 1 Ann., c. 18; for jails, under 11 & 12 W. III., c. 19, which authorised quarter-sessions "by equal proportions to distribute and charge the . . . sums of money . . . upon the several hundreds, lathes, wapentakes, rapes, wards, or other division" of the county; for houses of correction, under 7 Jac. I., c. 4; for prisoners in the King's Bench and Marshalsea, under 43 Eliz., c. 2; for prisoners in county jails, under 14 Eliz., c. 5; for setting prisoners on work, under 18 & 19 Car. II., c. 9 (*vulgo*, 19 Car. II., c. 4), which empowered quarter-sessions to raise money to provide a stock of materials for the purpose "in

is concerned, amalgamated with the poor-rate in 1739 by the act 12 Geo. II., c. 29, which says that some of the rates were so small that they did not amount to more than a fractional part of a farthing in the pound, and, "if possible to have been rated, the expense of assessing and collecting the same would have amounted to more than the sum rated." To obviate the difficulties and doubts which resulted from this, it provides that quarter-sessions shall make one assessment, to cover all these expenses, upon towns, parishes, and places "in such proportion as any of the rates heretofore made . . . have been usually assessed." The lump sums thus assessed on the parishes were to be paid in ordinary cases by the churchwardens and overseers "out of the money collected or to be collected for the relief of the poor of such parish or place." Where no poor-rate was levied, the petty constables were to raise the money "in such manner as money for the relief of the poor is by law to be rated or levied," by means of a constable's[1] or any other rate, as the justices might order. In 1815 (by 55 Geo. III., c. 51) Parliament directed the abandonment of the old practice of

such manner and by such ways as other county charges are levied and raised;" and for paying the cost of conveying vagabonds, under 13 Ann. c. 26 (*vulgo*, 12 Ann., stat. 2, c. 23), which authorised the raising of money "by such ways and means as monies for county jails or bridges may be raised."

[1] By 14 Car. II., c. 12, constables who had incurred expenses in relieving or conveying vagabonds to houses of correction and workhouses were empowered "to make an indifferent rate, and to tax all the occupiers of lands and inhabitants, and all other persons chargeable by the statute of the 43rd of Elizabeth concerning the office and duty of overseers for the poor."

assessing the amounts required in traditional and stereotyped proportions on the various parts of the county.[1] Quarter-sessions were ordered to assess and tax every parish and place according to a certain pound rate of the full and fair annual value of the messuages, lands, tenements, and hereditaments ratable to the relief of the poor therein. The true annual value of the property liable to the poor-rate thus became the basis for distributing the charge between parish and parish, as well as between individual and individual within the parish.

The hue-and-cry rate, which under the act of 1585 was to be assessed according to the ability of the inhabitants,[2] was assimilated to the poor-rate by practice and legal decisions without aid from the legislature. A non-resident occupier in 1674 tried to escape from the rate on the ground that as he was not a resident he could not keep watch and ward, and was therefore in no way responsible for the robbery. In spite of the plausibility of this contention, and of some precedents in his favour, he lost his case.[3] In the 1736 edition of Nelson's *Justice* there is a blank form of warrant in which the constables and headboroughs in a hundred are directed to raise the money required from each parish by assessing it on

[1] For an example of these traditional apportionments see *A General Rate for the County of Norfolk*, 1743 and 1768, which gives the amount to be paid by every parish in case of (1) "a three hundred pound levy," (2) a "four hundred and fifty pound levy," and (3) a "six hundred pound levy." Quarter-sessions order a copy to be kept by the overseers of every town, parish, and place in the county.

[2] See above, p. 46.

[3] Viner, *General Abridgment of Law and Equity*, s.v. "Robbery," p. 269.

the several inhabitants, "according to their method of rating for the poor."[1]

The sewers-rate alone of the rates which came into existence before the Commonwealth period has maintained a really separate existence. It has never been possible for even the densest mind to overlook the fact that the defence of land against inundation is for the benefit of those who have interests in the land liable to be flooded, and consequently in the apportionment of expenses the amount of benefit expected to accrue has always remained the recognised principle. There has thus been no scope for the confusion between rating a person because the fact that he occupies land of a certain annual value shows approximately that he has a certain ability to pay, and rating him because the value of his land is increased. When benefit received, and not ability to pay, is clearly recognised as the principle of assessment, it is evident that persons interested in the lands which, in the phrase of the Bedford Level Act of 1649, are "bettered"[2] by the expenditure should pay according to the extent of their interests in the improvement. So in the case of rural marshes and low-lying grounds the old law has remained practically unaltered, and the sewers-rate has never become mixed up with the poor-rate.

But at the beginning of the present century the sewers-rate was widely applied to the purposes of house and street drainage. In London there were seven commissions of sewers, five being subject to

[1] Vol. i. p. 478. The act of 1585 was repealed in 1827 by 7 & 8 Geo. IV., c. 27.

[2] In Scobell, *Acts and Ordinances*, Pt. ii. p. 37.

local acts and two to the great statute of Henry VIII. As the law created liability in respect of all property which received benefit or avoided damage by means of the sewers, all houses were supposed to be included in its provisions, whether drained or not, unless they were on "high lands" such as Hampstead, on the ground that they all received benefit from the surface-drainage of the streets. The rate was collected from the occupiers, but was deductible from the rent in the absence of agreement to the contrary.[1] The commissions were non-representative and absurdly large bodies; that for Westminster had about 200 members.[2] All the London commissions, except that for the City, which has now practically become a board of works appointed by the Corporation, were consolidated into one in 1848 (by 11 & 12 Vict., c. 112), and the new body made way to the Metropolitan Board of Works under the Metropolis Management Act, 1855 (18 & 19 Vict., c. 120). This act was careful to provide that the rearrangement which it effected should not prejudice the right of the occupier to deduct the sewers-rate from his rent. But similar care was not taken when the Local Government Act of 1888 was passed. Under that act the sewers-rate levied by the central authority lost its separate existence, and the right to deduct it from rent consequently disappeared.[3] This was not the result of any deep design, but of a mere

[1] *Report from Select Committee on Metropolitan Sewers*, Parliamentary Papers, 1834, vol. xv. pp. i.–vi.

[2] *Report from Select Committee on Sewers in the Metropolis* (Parliamentary Papers, 1823, vol. v.), Minutes of Evidence, p. 28.

[3] *Royal Commission on the Amalgamation of the City and County of London*, 1894; Minutes of Evidence, Questions 1236–42.

oversight. There was no effective opposition, in consequence of the prevalence of agreements on the part of the occupier to pay all rates. The fact that, as was alleged in 1823, ninety-nine tenants out of a hundred agreed not to deduct the rate,[1] of course did not diminish the injustice of refusing to allow the hundredth to deduct it when he had made no agreement not to do so. That such an injustice could be perpetrated in 1888 is strong testimony to the strength of the tendency towards consolidation on the basis of the poor-rate. In the case of sewers-rates raised by London vestries and boards of works the right of deduction from rent still exists, but is almost universally ignored, the occupier almost always undertaking to bear this as well as all other rates.

Of the later local rates, the first in chronological order is the land-tax. Simply because it happens to retain the term "tax" in its title, and because its proceeds go to the national exchequer, the land-tax is not usually reckoned as a local rate. But as it is a sum determined beforehand, and levied at different rates in different localities, it has the essential features of a rate and a local rate, and no comparison of the rates of two parishes is complete which omits it from consideration.

Though it is usually said to have been established after the Revolution, the true origin of the land-tax is to be found in the somewhat rough-and-ready method of raising money adopted by the Long Parliament. Requisitions for particular sums of money were at first laid upon those counties which were subject to the power of the Parliament. The requisitions

[1] *Report on Sewers*, 1823 (see above, p. 113, note 2), p. 39.

were gradually extended all over the country, and when reduced to a comparatively orderly system the procedure was as follows:—The county commissioners named in the act imposing the assessment appointed two assessors in each parish or place usually rated by itself. These assessors estimated the annual value of all kinds of real and personal estate whatsoever, the income from personal estate being assumed to amount to 5 per cent. on its capital value. The commissioners then added up the returns from all the assessors within their county, and calculated what number of pence in the pound would be necessary to raise the amount required from them by Parliament. The rate thus arrived at was collected, in the case of rents, from the occupiers of the lands and tenements, who were, of course, allowed to deduct it when paying their rent to their landlords.

These "monthly assessments," as they were called, were very like ship-money. They were naturally unpopular, and the Restoration Parliament only resorted to them because it could discover no other efficient means of raising money. It made the king a grant of £70,000 a month for eighteen months (by 13 Car. II., st. 2, c. 3), apportioning the amount among the counties in exactly the same way as the last assessment under the Commonwealth had been apportioned in 1659. The commissioners named for each county were to distribute the sum assessed upon it among the parishes, and for the assessment of the tax on each parish among the individual taxpayers they were to appoint two assessors, who, says the act, "are hereby required with all care and diligence to assess the same equally by a pound rate, as formerly, upon all

lands, tenements, hereditaments, annuities, parks, warrens, goods and chattels, stock, merchandise, offices usually rated, tolls, profits, and all other estates, both real and personal, within the limits, circuits, and bounds of their respective parishes and places." A curious provision shows how rough the method of assessment still remained after twenty years continuous use. It was provided that if the assessment by a pound rate should anywhere prove obstructive or prejudicial to the collection of the whole sum required, the commissioners might cause the assessment to be made by the "most just and usual way of rates held and practised" there. The act of 1664–5 (16 & 17 Car. II., c. 1), granting £2,477,500 in three years, is identical in its provisions, but does not distribute the total among the counties in the same proportions. The rest of the acts of Charles II. follow the new scale. Five of them are almost identical in their main provisions with the act of 1664–5; but the sixth and last, that of 1679 (31 Car. II., c. 1), shows a tendency towards a further stereotyping of the assessment. It says: "For the avoiding of all obstructions and delays in collecting the sums by this act to be rated and assessed, all places, offices, constablewicks, divisions, and allotments shall pay and be assessed in such county, hundred, place, rape, division, or wapentake, according to the like proportions and distributions in respect to this assessment as they were assessed and taxed" by the act 29 Car. II., c. 1. The first assessment act of William and Mary (1 W. & M., c. 3), that for granting £68,820 19s. 1d. per mensem for six months in 1688, makes no change whatever, and the next two assessment acts, which

were passed in 1690 (2 W. & M., sess. 2, c. 1) and 1691 (3 W. & M., c. 5), follow in its footsteps. In 1688, however, there were also "aids," or what we should call income-taxes, of 1s. and 2s. in the pound; and in 1692 and each of the three following years there were aids of 4s. in the pound. In 1696–7 an act (8 & 9 Will. III., c. 6) was passed "for granting an aid to his Majesty, as well by a land-tax as by several subsidies and other duties." This combines a kind of poll-tax on wage-earners with a tax of 25s. for every £100 of personal estate (traders paying double, and farmers only 12s. on their stock), and 3s. in the pound on the rental value of land. The enormously high rate of these income-taxes is by itself sufficient proof of the fact that they were never strictly assessed. Apparently because the yield from them was diminishing, Parliament reverted again in 1697–8 (by 9 Will. III., c. 10) to the plan of voting a fixed sum in definite amounts leviable from each county. The total was £1,484,015 1s. 11¾d., and it was assessed on the several counties and corporate towns in proportions determined by the yield of the first of the four-shilling aids in 1692. But instead of leaving the sum required from each county to be raised by an equal pound rate on all kinds of income, Parliament provides that offices and personalty shall be taxed 3s. in the pound, and then, "to the end that the full and entire sums charged upon the several counties, cities," and so on, "may be fully and completely raised and paid to his Majesty's use," it enacts that all manors, messuages, lands, tenements, quarries, mines, woods, fishing, tithes, tolls, and all annuities, rent charges and other profits out of land, "shall be

charged with as much equality and indifferency as possible by a pound rate for or towards the several and respective sums of money, . . . so that by the said rates" upon the personal estate, and so on, "and upon the said manors, messuages," and so forth, "the full and entire sums hereby appointed to be raised as aforesaid shall be completely and effectually taxed, assessed, levied, and collected." The land-tax continued to be voted annually in this form for a whole century, with the exception that 4s. was substituted for 3s., and the sums required from the counties and towns accordingly increased by one-third.

If the provisions of these annual acts had been faithfully carried out, it is plain that in many places land would either at once or very soon have been exempted from the "land-tax," since 4s. in the pound on incomes from other sources would have been sufficient to raise the specific sums demanded. What actually happened, however, was that the 4s. in the pound was not levied from personalty, and almost the whole burden was placed upon landowners. In 1797 this practice was legalised and perpetuated by the act which created the system of redemption of land-tax (38 Geo. III., c. 60), the unredeemed portion of the tax being made a perpetual charge on the unemancipated part of each parish or place. At that time only £150,000 was levied from property other than land; and in 1833, when all taxation of personalty was abolished by statute (3 Will. IV., c. 12), the amount was only £5214 8s. 4d.[1] The tenant's right to de-

[1] See Bourdin, *Exposition of the Land-Tax*, 3rd ed., by S. Bunbury, 1885, pp. 10, 11, where a table showing the amounts paid for personal property in each county is given.

duct the land-tax from his rent has remained intact throughout.

The history of the highway-rate, like that of the land-tax, begins during the Commonwealth period. The ordinance or act of 1654 (c. 3)[1] provides that two or more householders with lands worth £20 a year, or with £100 worth of personal estate, shall be chosen surveyors yearly in each parish. They shall view all the common highways and roads where carts and carriages usually pass, all common bridges belonging to the parish, and all watercourses, streets, and pavements. Within six days afterwards they are to give public notice in the church "to the parishioners to meet to make an assessment for repairing the said highways and streets, for making and repairing of pavements, and for cleansing the said streets and pavements from time to time, and for what else shall be requisite for the purposes aforesaid, and thereupon a rate or tax in writing . . . shall be laid by the said inhabitants present at such meeting, or the greater number of them, by a pound rate, upon all the several occupiers of houses, lands, tithes, coal-mines, fellable woods, tenements, or hereditaments within the parish, according to the true yearly value of the same; and also upon the dead goods, commodities, or stock-in-trade of every particular parishioner charged to pay to the poor, rating every £20 value of such goods equal to every 20s. land by the year; and such further rate to be afterward and oftener made as occasion shall require, so as all the rates together do not exceed 12d. in the pound for

[1] Several of the highway acts here dealt with have been already mentioned (pp. 91, 92) as illustrating the practice with regard to the poor-rate.

any one parish in any one year." If the inhabitants can not or will not agree to lay a rate within two days, the surveyors may make one of their own authority. In any case where the common highways or streets "extend in so great length in any one parish as that the parish is overburthened therewith, and the rate of 12d. in the pound before mentioned will not suffice to amend and repair the same," the justices in session are empowered to rate other parishes in their jurisdiction, up to the 12d. limit, in aid of the overburdened parish. Streets and pavements in cities, corporate towns, and their suburbs, were expressly declared to be common highways, and "scavengers" to be surveyors, and all streets and pavements were to be paved and kept in repair, "and cleansed for the conveniency and health of the inhabitants." If existing provisions and laws were insufficient for this, the parishioners "rated to the poor" might meet and "set down and make such reasonable by-laws and orders for the rating and taxing the several inhabitants of the said parishes, being occupiers of any houses, lands, tenements, or hereditaments, or having any stock or trade, or otherwise being of sufficient ability."[1] The rate thus to be levied seems to have been in addition to, not in substitution for, the statute labour required by the act of Philip and Mary.

Like some other parts of the Commonwealth legislation, this act was re-enacted without much alteration early in the reign of Charles II. The act of 1662 (14 Car. II., c. 6) provides that the surveyors are to consider "what sum or sums of money will be requisite

[1] In Scobell's *Acts and Ordinances*, Pt. ii. pp. 283–6.

to be raised . . . over and above what will be done by the other laws" made for the amending of highways, and thereupon shall, together with two or more substantial householders, "lay one or more assessment or assessments upon every inhabitant rated to the poor, and upon every occupier of lands, houses, tithes impropriate or appropriate portions of tithes, coal-mines and other mines, saleable underwoods, stock, goods, or other personal estate not being household stuff," within the parish, town, village, or hamlet, as they shall think fit, "which said assessment or assessments shall not exceed in the whole above the sum of 6d. in the pound in any one year." Twenty pounds in money, goods, stock, or other personal estate, is to be reckoned equal to 20s. a year in lands. The agreement of the parishioners generally is no longer sought after, and the provisions about streets are dropped. It is carefully provided that the tenant and occupier, not the landlord, is "to bear all charges for the mending of the highways," and that no occupier of lands is to be assessed both for land and stock. The rates were not to continue beyond 25th March 1665, however, and the next act—that of 1670 (22 Car. II., c. 12)—does not re-establish them, but simply provides that where the justices at quarter-sessions are satisfied that the other laws in force are insufficient for the repair of the highways of a parish, they may cause to be laid "one or more assessment or assessments upon all and every the inhabitants, owners, and occupiers of houses, lands, tenements, and hereditaments, or any personal estate usually ratable to the poor, within any such parish, township, or hamlet." These assessments were not to exceed 6d. in the pound per annum

on the yearly value of any lands, houses, tenements, and hereditaments so assessed, nor the rate of 6d. for £20 in personal estate, and they were to cease after 25th March 1673.

By the act of 1691 (3 W. & M., c. 12) a rate for reimbursing the surveyors for buying road material might be assessed by the justices upon all the inhabitants of the parish, according to the 43rd of Elizabeth for the relief of the poor. For general expenses, if satisfied that the other provisions of the law are insufficient, the justices might cause a rate to be laid upon the persons mentioned in the act of 1670. The limit of 6d. in the pound was still maintained. In spite of the introduction of the word "owner" before "occupier" in the act of 1670, and its repetition in 1691, it is clear enough that all these three acts follow the ordinance of 1654 in intending the rates to be laid on the same persons in the same proportions as the poor-rate.

The extension of the turnpike system hindered the development of the highway-rate, and we have a long interval before we come to the consolidatory act of 1767 (7 Geo. III., c. 42). According to this, money for the purchase of land required for widening a highway is to be raised by an equal rate "upon all the occupiers of lands, tenements, and hereditaments within such parish, township, or place, according to the rules and methods prescribed in an act of Parliament made in the 43rd year of the reign of the late Queen Elizabeth, entitled an act for the relief of the poor;" but the rate for general purposes, levied when the other laws prove insufficient, is to be "upon all and every the occupiers of lands, tenements, and heredita-

ments," without any such exact reference to the act of the late Queen Elizabeth. This act was repealed in 1773 by 13 Geo. III., c. 78, which provides for several rates, each with a limit of so much in the pound, and places them all on the occupiers of "lands, tenements, woods, tithes, and hereditaments." These words can scarcely have been intended to indicate exactly the same things as were subject to the poor-rate. "Woods" and "hereditaments" include certain woods and mines which are not saleable underwoods nor coal-mines, and were therefore supposed to be excluded from the scope of the poor-rate by the express inclusion of saleable underwoods and coal-mines. The difference between the two rates was fully recognised in the great act of 1835 (5 & 6 Will. IV., c. 50). This provided that "a rate shall be made, assessed, and levied by the surveyor upon all property now liable to be rated and assessed to the relief of the poor, provided that the same rate shall also extend to such woods, mines, and quarries of stone, or other hereditaments, as have heretofore been usually rated to the highways." It has been said[1] that these words rendered stock-in-trade ratable to the highways, but it is quite certain that this was not intended and did not happen. Custom paid so little attention to the law of the matter that it seems to have been most common not to rate the mines, woods, and quarries not ratable to the poor-rate; and in 1862 (by 25 & 26 Vict., c. 61) this practice was legalised wherever it existed on the formation of a highway district. It was provided that the highway boards' expenses were to be raised by precept to the overseers

[1] Danby P. Fry, *Local Taxes*, p. 48.

of the poor, except in cases where for a period of not less than seven years it had been the custom of the surveyor to levy a highway-rate in respect of property not subject to be assessed to the poor-rate. In these cases the waywarden of the parish was to levy a highway-rate as if the act had not passed. But this partial discrepancy between the highway-rate and the poor-rate disappeared when the poor-rate was extended to all woods and mines by the Rating Act of 1874.

Until the present century legislation with respect to streets in towns was almost entirely local, and it is consequently buried in many hundreds of acts of Parliament which are not easily obtained, and from their enormous bulk are very difficult to deal with when they are obtained.

A comprehensive act (14 Car. II., c. 2) was passed in 1662 "for repairing the highways and sewers, and for paving and keeping clean of the streets in and about the cities of London and Westminster, and for reforming of annoyances and disorders in the streets of and places adjacent to the said cities, and for the regulating and licensing of hackney coaches, and for the enlarging of several strait and inconvenient streets and passages." It provides that rates, taxes, and assessments for scavengers, rakers, and such-like officers' wages for cleansing the streets, shall be paid by the parishioners and inhabitants of every parish and precinct in the city of London, "according to the ancient custom and usage of the said city." In Westminster likewise rates are to be made according to custom. In the other parishes within the weekly bills of mortality, the constables, churchwardens, and overseers of the poor and of the highways, calling together

such of the inhabitants as have formerly borne the like office, are to "make and settle a tax, rate, or assessment, according to a pound rate, to be imposed or set upon the inhabitants," which rate is to be confirmed by two justices. Nothing, except the reference to custom in the case of the City and Westminster, is laid down as to the principles on which the parishioners or inhabitants are to be rated, but there is a provision in the case of the City that all new messuages, tenements, and houses shall be likewise rated, taxed, and assessed, and shall pay proportionably with others, which is sufficiently suggestive. As to the strait and inconvenient streets and passages, the act contains a betterment clause. After giving certain commissioners power to pull down one side of the street, it says, "And whereas the houses that shall remain standing on the other side of the said street or streets, or behind the said houses that shall be so pulled down as aforesaid, will receive much advantage in the value of their rents by the liberty of air and free recourse for trade and other conveniences by such enlargement, it is also enacted . . . that in case of refusal or incapacity . . . of the owners and occupiers of the said houses to agree and compound with the commissioners for the same, thereupon a jury shall and may be empannelled . . . to judge and assess upon the owners and occupiers of such houses such competent sum or sums of money or annual rent, in consideration of such improvement and renovation, as in reason and good conscience they shall judge and think fit." The same clause appears in the act of 1666 (18 & 19 Car. II., c. 8) for rebuilding London, and is there applicable to all streets which

may be enlarged, instead of only to certain streets mentioned by name. This act also authorises a "reasonable tax upon all houses within the said city and liberties thereof, in proportion to the benefit they shall receive" from the new drains and paving.

The act of 1662 was allowed to expire in 1679, and except in the City, where "ancient usage and custom" seems to have been still strong enough to stand without statutory support, great inconveniences ensued.[1] These were tolerated for eleven years, and then, in 1690, a new act (2 W. & M., sess. 2, c. 8) for paving and cleansing the streets was passed. This provides that all public streets already paved shall from time to time be repaired at the costs and charges of the "householders inhabitants" in such streets, and in the case of unoccupied houses, at the cost of the owners, each householder or owner being required to repair the part of the street in front of his house as far as

[1] The preamble of the act 2 W. & M., sess. 2, c. 8, gives a graphic description of these inconveniences:—"Many persons in the out-parishes in Middlesex and other parishes . . . which have been chosen to serve the office of scavenger refuse to take the execution of the said office upon them, and others who have been rated and assessed towards the cleansing and carrying away the dirt and soil out of the streets have refused to pay the rates assessed upon them, there being no law in force to compel them thereunto, so that no person can be employed to be raker to carry the dirt out of the said streets, for want of some provision for payment for doing that service, and the poorer sort of people daily throw into the said streets all the dirt, filth, and coal-ashes made in their houses, by reason whereof the said streets are become extremely dirty and filthy, so that their Majesties' subjects cannot conveniently pass through the same about their lawful occasions, and many other inconveniences daily arise for want of the like provisions in other cases relating to the street pavements and common ways." The ancient custom and usage of the City were expressly preserved by the act.

the middle of the channel. In the case of new streets, quarter-sessions might require the paving to be done by the "owners and inhabitants of all and every the houses new built or hereafter to be built, or adjoining to any new streets or ways, . . . according to their several and respective interests therein." In the two Westminster parishes the cost of cleansing the streets and removing house refuse is to be "rated, taxed and assessed, raised, and paid by the parishioners of those respective parishes, according to the custom and usage" of the city of Westminster. In the parishes outside the cities of London and Westminster it is to be raised by a "pound rate to be imposed or set upon the inhabitants" by a meeting summoned by the constables, churchwardens, overseers, and surveyors, who are to call together "such other ancient inhabitants of their respective parishes as, according to the custom of the said parishes or places, are usually present at the election of parish officers."

It is easy to see that, as soon as, by a natural transition, the expenses of paving came to be borne by public authorities levying rates, instead of by the adjoining owners of property, each dealing with the patch in front of his own property, the old idea that the construction and maintenance of paving was an obligation of the owner and not the occupier would be in danger. The maintenance of the surface of a street is not always practically distinguishable from keeping it clean, and lighting and watching it is work of much the same character; while to distinguish between the cost of creating an improved surface and the maintenance of an old one is a matter of some nicety, and requires a conception of capital and current

expenditure which is scarcely present to the minds of government authorities, local and imperial, even at the close of the nineteenth century. It is not very surprising, therefore, to find that by the beginning of the eighteenth century the ancient liability of the owners was no longer recognised. An act of 1698–9 (11 Will. III., c. 23) for cleansing, paving, and lighting Bristol, which allows the tenants (in the absence of agreement to the contrary) to deduct the paving-rate from their rents, expressly attributes the permission to the consideration that the landlords were liable for paving expenses "by the custom of the city," as if this was a local peculiarity. In the scores of acts for paving parts of London which were passed in the eighteenth century there are several which charge the whole cost on the landlords,[1] and a great many which charge them with proportions such as two-thirds, a half, one-third, and three-tenths;[2] but it is quite plain that this was regarded as

[1] See L.C.C. *Enactments relating to London*, Part i., Rating clauses division, pp. 117, 118 (8 Geo. II., c. viii. § 18), for paving with pebble stone the unpaved parts of Oxford Street, a frontage rate; p. 47 (17 Geo. III., c. lx. §§ 7, 10, 11), for enclosing, fencing, and embellishing the middle of Hoxton Square, a pound rate on the houses in the square; p. 215 (26 Geo. III., c. cxx., § 63) and p. 217 (52 Geo. III., local series, c. xiv. § 96), for paving the Clink; p. 192 (28 Geo. III., c. lxviii. § 32), for improvements in Bermondsey; p. 207 (33 Geo. III., c. xc. § 32), for a new street in the parish of Christ Church, a rate on the land abutting on the new street; p. 26 (43 Geo. III., local series, c. x. § 14), for paving Kensington Square, Young Street, and James Street, a rate on the houses in the square and streets.

[2] *Ibid.*, p. 162 (10 Geo. II., c. xv. § 3), for enclosing, watching, paving, adorning, and cleaning Red Lion Square, a rate on the houses in the square, three-tenths; p. 167 (16 Geo. II., c. vi. § 3), the same in the case of Charter House Square; p. 253 (24 Geo. II., c. xxvii. § 4), for enclosing, paving, lighting, and adorning Golden Square, a rate on the houses in the square, one-half; p. 232 (29

exceptional legislation, departing avowedly from the general rule.

In general, the rates for street expenditure, such as paving, cleansing, watering, lighting, and watching,

Geo. II., c. xc. § 4), for repairing the terrace walk and water gate, a rate on York Buildings, one-half; p. 24 (7 Geo. III., c. ci. § 72), for paving and repairing certain footways in Kensington, a rate on contiguous property, one-half; p. 279 (9 Geo. III., c. xxii. § 4), for paving, cleansing, and lighting certain streets in Aldgate, a rate on contiguous property, apparently ninepence in three shillings and sixpence; p. 227 (11 Geo. III., c. xxi. § 37), for paving certain streets in Wapping, a rate on contiguous property, one-third; p. 266 (11 Geo. III., c. xv. § 34), for paving Whitechapel High Street, a rate on contiguous property, one-third, "any agreement or contract between landlord or tenant, or any usage, custom, or law to the contrary notwithstanding;" p. 280 (11 Geo. III., c. xxiii. § 37), for paving certain streets in Aldgate, a rate on contiguous property, one-third; pp. 290, 291 (12 Geo. III., c. xxxviii. § 92), for paving in the parish of Christ Church, one-half; pp. 126, 127 (14 Geo. III., c. lii. § 16), for cleansing, paving, lighting, watching, and embellishing Grosvenor Square, a rate on the houses in the square, one-half; p. 228 (17 Geo. III., c. xxii. § 52), for improvements in Wapping, a rate on contiguous property, one-third; p. 267 (18 Geo. III., c. xxxvii. § 29), for paving the footways of Whitechapel Road, a rate on contiguous property, one-third; p. 261 (20 Geo. III., c. lxvi. § 81), for paving in Mile End New Town, one-half; p. 229 (22 Geo. III., c. xxxv. § 40), for improvements in Wapping, a rate on property improved, one-third; p. 204 (23 Geo. III., c. xxxi. § 39), for paving, cleansing, lighting, and watching in Rotherhithe, "where the term of any agreement or lease of any premises shall not exceed the term of seven years," one-third; p. 268 (23 Geo. III., c. xci. § 22), for paving and regulating certain lanes in Whitechapel, a rate on contiguous property, one-third; p. 7 (33 Geo. III., c. lxxxviii. § 65), for certain paving in Bethnal Green, a rate on contiguous property, one-half; p. 26 (43 Geo. III., local series, c. x. § 14), for maintaining the fence in Kensington Square, a rate on the houses in the square, one-half. Only in one or two cases do these provisions override agreements on the part of tenants to pay all rates, but possibly the ordinary agreement of those times was not strong enough to oblige the tenant to pay a rate or proportion of a rate expressly charged on the landlord.

created by local acts, seem to have conformed closely to the poor-rate, though there were many differences on points of detail. The only general difference of principle was that the benefit to be received from the expenditure was constantly taken into account in the case of the street-rates. Special areas were formed for the purpose, and even within those areas houses in courts were often charged at a lower rate for paving than houses in carriage-roads, and places not actually lighted or watered were frequently exempted from the lighting and watering rates, and so on.

In all the towns except London the Public Health Act, 1848 (11 & 12 Vict., c. 63), placed the cost of paving and other street expenditure upon the general district rate, which is levied on the poor-rate assessment. Seven years later the same thing was done for London by the Metropolis Local Management Act, 1855 (18 & 19 Vict., c. 120), which swept away the 150 authorities for paving which then existed in London, and transferred their powers to the vestries and boards of works, whose rates were directly based on the poor-rate assessment.[1]

Both these acts admitted certain abatements for which the Lighting and Watching Act, 1833 (3 & 4 Will. IV., c. 90), afforded a precedent. That act provided that houses and buildings should always pay a

[1] It is inconceivable that a public authority should undertake to lay out a building-estate for the benefit of the owners at the expense of the rest of the area, and so modern legislation has preserved, and even extended, the obligation of the owner to provide a properly furnished street in the first place, though all the subsequent expenses of improvements and maintenance have been laid upon the general body of ratepayers. See 18 & 19 Vict., c. 120 § 105; 25 & 26 Vict., c. 102 § 77; and 38 & 39 Vict., c. 55 § 150.

rate three times as high as agricultural land. Under the Public Health Act every "occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market-garden, or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or a railway constructed under the provisions of any act of Parliament for public conveyance," is rated only in the proportion of one quarter of the full net annual value. The Metropolis Management Act continued the abatement allowed by the Lighting and Watching Act wherever that act had been adopted.

The purely modern rates, such as the borough-rate and the police-rate, all based from the first upon the poor-rate, are of no great interest from our present point of view.[1] We may therefore proceed to sum up the results at which we have arrived.

It is clear that two great principles or canons of taxation swayed the minds both of the people who respected custom in the assessment of the old rates and of the politicians and parliamentary draughtsmen who created new statutory rates. These principles or canons are:—

(1.) That every inhabitant of a district should be made to contribute according to his ability; and

[1] For a detailed account of the rates as they existed at the zenith of their complication, see the *Report of the Poor Law Commissioners on Local Taxation*, 1843 (Parliamentary Papers, Nos. 486, 487, and 488: in vol. xx.). For their state outside London in 1884 and 1894 the best authorities are the two editions of *An Outline of Local Government and Local Taxation in England and Wales* (*excluding London*), by R. S. Wright, H. Hobhouse, and (2nd edition) E. L. Fanshawe. The *Annual Local Taxation Returns* published by the Local Government Board, with all their defects, present an unrivalled picture of local taxation at work.

(2.) That every one who receives benefit from the local expenditure should be made to contribute in proportion to the benefit he receives.

Applied to the same rate, the two principles are obviously incompatible. It is difficult to think of any kind of government expenditure which confers benefits upon people approximately in proportion to their ability to contribute. But it happens that in practice the nearest possible approximation to local rating according to ability and the nearest possible approximation to local rating according to benefit are one and the same thing, namely, the rating of persons in respect of fixed property in the district.

Local taxation according to ability is impossible except where the localities are very large, and divided from each other by strong prejudices. With migration between one place and another as easy as it has long been in England, it is merely ridiculous to expect it to be possible to rate a millionaire, in the parish in which he resides, on his whole income. The effect of an honest attempt to carry out such a policy would obviously be to make the wealthy select for their residence the lowest-rated places, which, of course, would be rated lower than ever when the incomes of the millionaires were added to their valuation lists. This wild attempt was never made in England. What was attempted was to rate the sources of income visible in the parish. By this plan, if effectually carried out, a man's income would often be cut up between several parishes, and naturally a great deal would be lost in the process. It is not very easy for assessors to discover the amount of movable property in their district, and they are not likely to be very anxious to

discover it and rate it at its true value. The desire of the majority of ratepayers is to attract such property to the district, not to repel it.[1] Consequently rates intended to be assessed according to the ability of the inhabitants ended, as local income-taxes always do end, in becoming rates on fixed property only. Rates intended to be assessed according to benefit received, on the other hand, were naturally levied in respect of fixed property alone from the very beginning. When a district is "improved" in any way—made more eligible either as a place of residence or of business—the benefit received by the owners of fixed property in the district is generally much more im-

[1] See for an example of the feeling on this subject which prevailed at the beginning of the eighteenth century, *An Attempt to explain the true Meaning of an Act for erecting a Workhouse in . . . Norwich, &c., and to point out the exact Proportion assessable on each Property mentioned in the said Act, namely, Houses, Lands, and Personal Property or Stock-in-Trade, &c.* By a Guardian. Norwich; n. d. On pp. 11–12 the author points out that, if persons are charged 2s. 6d. in the pound on their income from the funds, "they will be obliged either to quit the town, and bid adieu to their nearest and dearest relations and friends, or probably be considerably distressed in their circumstances. As every one will readily see, one-eighth part of their revenue is an object of vast importance, and therefore might occasion many such leaving the city, and for ever prevent any more such coming into it. And as such kind of people bring so much ready money, inhabit the houses, pay all common taxes, and lay out all their revenue among the tradespeople, shopkeepers, and artificers, and as all such ready-money people are the life and support of all the lower tradespeople, all wise governments, whether in states or private communities, ever have given, and ever will give, all imaginable encouragement to such respectable and desirable inhabitants; and therefore it would be the highest imprudence to exclude and, as it were, excommunicate them." From stock-in-trade within the city, which was certainly ratable under the act, he thought a trader should be assumed to receive an income of only 3 per cent., since his ability, knowledge, and industry in managing his fortune, and his courage in venturing it, are not assessable.

portant and permanent than that received by other persons. The improvement raises the value of the fixed property, but cannot much affect the value of the movables in the district, since movables in one place are always subject to the competition of movables imported from some other place.

Both the popular canons of local taxation thus led to the same unpopular practical conclusion, the rating of fixed property only.

The fact that the rates, with one or two small exceptions, are laid upon the occupiers and not on the owners of the fixed property, has been largely the result of an intelligible indifference on the part of the occupiers, which led them to abandon old rights and not to use the political power which they have possessed for sixty years, to enforce the creation of similar rights in the case of new rates. In a rural community the densest person with the least acquaintance with economics can see that taxes are paid out of the produce of the labour of the cultivators of the land. It needs no great acuteness to see that the same thing is true *mutatis mutandis* of an urban community, though it may be a little more difficult to identify the persons who use the property and to define their produce. The occupier has the first handling of the produce, and it is therefore usually simpler to collect the rate from him than to take it, so to speak, at second hand from the landlord.[1] Of course it could be put upon the landlord without any inconvenience by the simple

[1] Where, however, the occupiers are unsubstantial or migratory it is more convenient to collect rates from their landlord, and modern legislation enables this to be done. See Wright and Hobhouse, *Local Taxation*, 2nd edition, pp. 38, 39.

process of allowing the tenant to deduct it from his rent, and, as we have seen, this course was often followed. But so long as rates remain stationary—and, after all, changes are the exception rather than the rule—it can make no difference whether they are deductible from rent or not. There may be here and there persons who will pay as much for a rate-free house or farm as for the same house or farm subject to a rate of 5s. in the pound, but such persons are fortunately of somewhat exceptional mental constitution. We are not really "mostly fools." Who will stand up and confess that he took 76 —— Street at £100 a year, and subject to £20 of rates, when an exactly similar house next door, but in another parish, was to let at £100 a year, and only £12 of rates? As for changes in rates, it was natural that the landlords should have a greater desire to be secure from them than the tenant, since the more important increases in current expenditure are generally made in order to produce increased advantages, which accrue to the tenant during the term. If a distinction had been made between rates for current expenditure or on income account and capital expenditure, the tenants might well have insisted on the landlords bearing the rates for capital expenditure in proportion to their interests; but no such distinction was made, or could have been made, considering the imperfections of all government account-keeping.

On the whole, it may be said that the system is much more in accordance with the second principle, that of taxation according to benefit, than with the first, that of taxation according to ability. This is the secret of the strength which has hitherto enabled it to resist all attacks, for that portion of local taxa-

tion which is raised for purposes to which the principle of benefit is applicable has long been rapidly increasing in proportion to that to which the principle of ability is applicable. This is not only due to the growth of local public works, such as sewers, but also to the fact that, as government organisation has become more efficient, expenses which ought to be borne in proportion to ability have been wholly or partially removed from the sphere of local taxation. They have been spread over wider areas, such as the union instead of the parishes, the county instead of the unions, and even at last over the kingdom in general, within which area alone taxation according to ability is still approximately possible. The movement in the direction of enlarging the area of chargeability in the case of the benefit rates has been of much less magnitude, and is merely the result of the fact that modern towns and modern public works cover wider areas, and have consequently enlarged the districts within which benefit from local expenditure is obtained. It is easy to say that what is required is to divide the expenditure into that which is incurred in order to benefit the locality on the one hand, and that which is incurred for the good of the nation or mankind on the other, and to remove the latter altogether from the sphere of local taxation. In practice the expenditure does not fall into two clearly defined classes, and even if it did, the most consummate statesmanship would find it difficult always to reconcile extension of the area of chargeability with economy in administration. Still, immediate progress is possible, though the complete solution of the problem must not be expected till a short time before the commencement of the millennium.

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THE END.

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